



UNIVERSITY OF BERGEN

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Master thesis

**Women's Substantive Representation in Parliament
A Comparative Analysis of Legalising Abortion in Argentina and Uruguay**

By

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ABSTRACT

This thesis is a comparative study of substantive representation of women in parliament, focusing on the process of abortion legislation in Argentina and Uruguay. Women's representation in parliament has increased across Latin America over the last 20 years due to the adoption of gender quotas. The expectation is that more women in parliament will change politics and lead to improvements in women's rights. When women's interests are promoted, substantive representation occurs. Given that Latin America is the region in the world with the most strict abortion policies, it is puzzling that the Uruguayan Congress with only 12 % women has legalized abortion, while the Argentine Congress with 36 % women has failed to do so. I use process-tracing methods and in-depth interviews of central actors in Argentina and Uruguay to analyse the process-oriented and outcome-oriented aspects of substantive representation. I find that although the elements connected to the process-oriented aspect (where does substantive representation occur, why is substantive representation attempted, who acts in substantive representation, and how is substantive representation expressed) increase the chances of outcome (here: abortion legislation), external factors related to the context in which the legislative processes unfold provides a more comprehensive explanation for why abortion has been legalized in Uruguay but not in Argentina.

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When writing this part of the thesis, the torture has come to an end. Or, in my case, you do it just to get a break from the endlessly long document that is still a draft with red markings all over to make sure you don't forget the about one million things you have to consider before submitting. Now that the end is near, I can't wait to set myself free. However, I have to admit that the life without my thesis, which has been the reason I get out of bed every day the last months, is somewhat frightening.

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I alone am responsible for the content of this thesis.

Benedicte Einarsen

Bergen, 20/11/14

*To Ane and Cornelia
Hakuna Matata!*

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Chapter 1

1 Introduction: Substantive Representation of Women

*“With few women in politics, it’s the women who change.
With many women in politics, politics change”*

-Network of Political Women, Argentina

1.1 Introduction to Thesis

This thesis is a qualitative study of women’s ‘substantive representation’ in parliament illustrated by the case of abortion rights in Argentina and Uruguay. Latin America is of particular interest when studying women’s representation due to the increase of women in politics across the region the last 20 years (Quotaproject 2014). This development has much to do with the adoption of *legislative gender quotas* in a number of countries, a quota measure which by law guarantees a 30 % minimum of women representatives in the national parliament. One of the arguments used by feminists for the adoption of quota measures is that women will change politics. However, when quota measures were adopted in legislatures around the world, the presumed effect was yet to be documented. As women’s representation in parliaments has increased, scholars have attempted to evaluate whether more women in parliament change the political agenda and the content of the law, particularly legislation related to gender issues and women rights. Thus, there has been an assumption about a relationship between women’s descriptive representation - women’s presence in politics - and women’s substantive representation - the promotion of women’s interests.

The concept of substantive representation refers to what representatives *do* in order to represent their constituencies’ ‘substantive’ interests, for example relating to typical women’s rights such as the right to abortion, derived in liberal and human rights theory from the right to respect for private life. Franseschet and Piscopo differentiate between *process-oriented* and *outcome-oriented* aspects of substantive representation. The process-oriented aspect refers to *acting for women*: “Acting for women occurs when female legislators introduce bills that advance women’s interests, bring gender perspectives into legislative debates, and network with women inside and outside the (...) Congress” (Franseschet and Piscopo 2008:395). The outcome-oriented aspect refers to legislation or policy outcomes (2008:395,397). Substantive

representation requires that legislators have certain attitudes and preferences when acting as representatives. The activities they carry out in order to promote the issue of interest increase the likelihood that transformative outcomes to institutions and policies occur (Franseschet and Piscopo 2008:397). Policy outcome may thus be influenced by process-oriented activities that promote women's rights, however, its success may also be determined by external factors related to the context in which the representatives operate within: "In terms of changing outcomes we find that legislative success depends on action (that women engage in a process of substantive representation) and context (the environment in which the process unfolds)" (Franseschet and Piscopo 2008:396).

The conventional approach is that women representatives are the actors that promote women's rights and the elected assemblies are the sites where substantive representation occurs. Celis, Childs, Kantola and Krook (2008) have suggested that scholars move beyond the focus on the number of women representatives in parliament, and widen the scope of inquiry. This new approach requires an inclusion of less studied elements of substantive representation of women and opens for the possibility that male representatives may act on behalf of women, and that women's substantive representation may occur outside the parliament (Celis et al. 2008). Researchers thus need to abandon the *critical mass theory* which holds that a certain amount of women representatives is necessary for change to occur, in favor of a focus on *critical actors* - individuals who initiate policy proposals on their own, even when women form a small minority, and embolden others to take steps to promote policies for women (Childs and Krook 2009:528).

1.2 Research Question and Clarifications

Although scholars have remarked that the growing participation of women in political decision-making might change the outlook for abortion politics in Latin America (Htun 2003), there has been noteworthy little progress. The point of departure of this study is based on the puzzling contradiction with regards to the variation of women's descriptive representation on the one hand, and the policy outcomes of legal abortion on the other hand, in Argentina and Uruguay. In Argentina, women's representatives hold around 36 % of the seats in the Congress (Inter-parliamentary Union 2014a). However, no progress has been achieved in terms of legalizing abortion. In Uruguay, women representatives hold only 12 % of the seats in the Congress (Inter-parliamentary Union 2014a). When the Congress legalized abortion in

2012 Uruguay became one of the few countries in the region with significant progress on that area.

This apparent paradox calls for an explanation. Theory suggests that a higher degree of participation of women in parliament may affect substantive representation of women in terms of an increased focus on women's rights in parliaments. Nevertheless, the recent progress in Uruguay illustrates that it might be possible to achieve progress in women rights, notably with respect to abortion rights, under certain conditions, also when the degree of women representation in parliament is low. According to Franseschet and Piscopo, "researchers should ask why female legislators experience success as well as defeat. Exploring the disconnect between legislators' actions and policy outcomes requires a closer look at context" (2008:400). Hence, the selected cases should contribute to a further understanding of both the process-oriented and the outcome-oriented aspects of substantive representation. The research question can thus be formulated in the following manner:

How do the different elements of the process-oriented aspect of representation explain the variation of outcome in legal abortion in Argentina and Uruguay? What other external factors can be identified?

The comparative analysis of this thesis is two-folded: First, I study the process-oriented aspect with regards to the promotion of abortion rights in Argentina and Uruguay. I apply the new approach suggested by Celis et al. (2008) and study the legislative process in each case through the four analytical elements: i) *Where does substantive representation occur*, ii) *why is substantive representation of women attempted*, iii) *who are the critical actors*, and iv) *how is substantive representation expressed*. These elements constitute the process-oriented aspect of substantive representation of women in this thesis. The aim of the comparison of Argentina and Uruguay is to highlight nuances and variation between and within the cases and analyze the implications of the process and the effect on policy outcome. My assumption is that the magnitude of the overall process of promoting legal abortion influence policy outcome, as suggested by Franseschet and Piscopo (2008). Although the framework by Celis et al. (2008) works well for comparing the process-oriented aspects of representation, it may not be efficient in accounting for the specific context in which the legislative processes unfold. The way political representation is translated from theory to practice depends on complex cultural and institutional settings specific to each country (Tremblay (2006:502). In the second part of the analysis, I therefore consider the impact of *external factors*. These factors should be

understood as factors that are external to the analytical model of process presented above, but which influence the promotion of abortion rights. In order to reach a comprehensive explanation of why abortion was legalized in Uruguay and not in Argentina, it is necessary to consider the implications of factors that relates to the cultural and institutional context.

1.3 Theories of Women's Representation

The theoretical framework of this thesis is based on normative discussions of the concept of political representation, and empirical findings of prior studies on women's representation. Hanna Pitkin's seminal work *The Concept of Representation* (1967) is central to the theoretical debate. Pitkin's dimensions of *descriptive* and *substantive* representation have been at the core of the studies of women's representation. Briefly, the dimension of *descriptive representation* is referred to as "standing for"; the representative has certain characteristics which are similar to the one he or she represents. The term is therefore often related to the proportion of women or other minorities which are present in elective political organs (Franseschet, Krook, and Piscopo 2012:25). Empirical work within this field has studied what factors affect the presence of women in elective assemblies, including but not limited to electoral rules (Jones 2004, Matland and Taylor 1997), ideology, religion and culture (Paxton 1997), socioeconomic factors (Iversen og Rosenbluth 2010), and the effect of various types of quota measures (Dahlerup 2006; Jones 2009; Krook 2009; Tripp and Kang 2008). The dimension of *substantive representation* originates in Pitkin's definition of representation as "acting for": "We are now interested in the nature of the activity itself, what goes on during representing, the substance or content of acting for others, as distinct from its external and formal trappings" (Pitkin 1967:114). Pitkin introduced this idea of representation, motivated by the need to clarify "what is entailed in viewing representation as an activity and how such views differ from what has gone before" (1967:112).

With regards to women's substantive representation, the conventional approaches have largely been based on the assumption that women act for women, which implies an observable shift towards more "women friendly" policies when more women enter the parliament. However, there are no guarantee that women representatives act for women, as identity, partisan loyalty and institutional factors may shape and constrain women's capacity to "act for women" (Mackay 2008:127). Studies tend to find that the increase of women in parliaments affect the political agenda, but it is not a decisive factor in terms of policy

outcomes (Franseschet and Piscopo 2008, Devlin and Elgie 2008, Htun, Lacalle and Micozzi 2013). For instance, Lopreite (2014) finds that while the number of female legislators was important for introducing the issue of legal abortion in the Argentine and the Mexican Congress, women's representatives' position towards abortion are shaped by partisanship and ideology which was critical to policy outcomes. The empirical findings of substantive representation of women are thus dependent on how scholars measure the concept. According to Franseschet,

A conceptual framework focusing on both process and outcome has at least two advantages. First, it allows for a more precise analysis of women's roles in promoting women's substantive representation and of the gendered environment in which they act. Although existing studies that focus on process (such as bill introduction) are explicitly addressing women's roles, studies of policy outcomes may be missing out on the role of women and the gendered environment in bringing about these outcomes. A focus on both process and outcome permits a firmer grasp of the gendered institutional dynamics in legislatures that either facilitate or obstruct favorable policy outcomes. Distinguishing between process and outcome also draws attention to a broader array of factors that affect women's substantive representation (2010:60).

The distinction between substantive representation as process and outcome contribute to a more accurate analysis of what is going on in women's substantive representation.

1.4 Analytical Framework

The analytical framework in this thesis builds upon Celis et al.'s (2008) approach for studying elements of substantive representation of women. With the method of *case-centric process-tracing*, I conduct a comparative case study of the process-oriented and the outcome-oriented aspects of substantive representation in Argentina and Uruguay. The *case-centric* variant of process-tracing is based on the perception that the social world is complex, multifactored and extremely context-specific. The ambition is not to prove that a theory is correct but instead prove that it has "utility in providing the best possible explanation" (Beach and Pedersen 2013:13). The procedure of process-tracing resembles a detective's investigative work where researchers unpack the causal relationship and study the causal mechanism linking the two concepts. Studying causal mechanisms with process-tracing methods enables the researcher to make strong within-case inferences about the causal process whereby outcomes are produced, enabling us to update the degree of confidence we hold in the validity of a theorized causal mechanism (Beach and Brun Pedersen 2013:2). The starting point is the policy outcome in Uruguay and the absence of policy outcome in Argentina. I then trace backwards the processes in order to investigate whether the four elements by Celis et al. (2008) are plausible to explain the variation in outcome. Then I analyze the impact of the external factors. The

ambition is to craft a *minimally sufficient explanation* for the particular outcome, with sufficiency understood as an explanation that accounts for all the important aspects of an outcome (Beach and Brun Pedersen 2013:18).

During my fieldwork in Argentina and Uruguay in 2014 I have conducted 14 qualitative interviews with actors operating within political institutions and civil society. Together with an analysis of relevant documents such as reports, transcripts from legislative debates, documents of the legal abortion bills and newspaper articles, the interviews constitute a major part of the data collection. With regards to the analysis of the process-oriented aspect, I include sites where discussions of legal abortion have had an impact; the national legislature, local legislatures, women's movements and courts. The sites included vary in each case depending on the findings. I review the framing of arguments in favor of legal abortion by analyzing relevant legislative documents in each case. Further, I study critical actors and how their actions have contributed to bring the legislative debate further. In terms of how substantive representation is expressed, I study the various activities that are promoted to achieve legal abortion in the parliaments and in the civil society. In the second part of the analysis I consider a set of institutional and cultural factors which I call *external factors* on the premise that they are external to the elements which are included in the approach by Celis et al. (2008). The necessity of including these factors in the analyses appeared while I was doing the fieldwork; these were factors that various respondents pointed to on several occasions. Hence, this part of the analysis is highly inductive and guided by the empirical findings. I have sorted the external factors into four categories; legislative factors, executive factors, cultural factors and civil society factors.

1.5 Case Selection

Argentina and Uruguay are similar in some respects and different in other aspects. Argentina is the second largest country in South America with a population of 41 million people, while Uruguay is a small country with only 3.3 million inhabitants. Perhaps the most important difference is that Argentina is a federal state and Uruguay is a centralized unitary state. However, the abortion law is part of the Criminal Code in both countries and amendments have to be solved in the Congress (Lopreite 2014). On these grounds I consider the federal-unitary aspect to be of less relevance in this particular analysis. Both countries have presidential systems; the president is head of state and government with legislative veto

power. The Congress is bicameral, consisting of the Senate and the House of Representatives in Uruguay, and the Senate and the Chamber of Deputies in Argentina. Argentina adopted the quota law in 1991 and has experienced a steady increase in women's numerical representation since then; women constitute 36, 6 % of the elected representatives in the Chamber of Deputies, and 38, 9 % in the Senate. Argentina is one of the 20 countries in the world with most women in parliament (Inter-Parliamentary Union 2014a). In Uruguay, 13, 1 % of the representatives in the House of Representatives are women, and only 6, 5 % of the seats in the Senate are held by women. The low percentage of women puts Uruguay at number 109 on the Inter-Parliamentary Union's world list of women in national parliaments (Inter-Parliamentary Union 2014a).

The party system in Uruguay was historically characterized by a two-party system concentrated around the liberal *Colorados*¹ and the conservative *Blancos*² (González 1991). Today the leftist coalition *Frente Amplio*³ has occupied the political space that formerly belonged to the progressive (but now economically conservative) *Colorados* (Coppedge 2007). In Argentina the multi-party system is concentrated around *Partido Justicialista*⁴ and *Unión Cívica Radical*⁵. Parties in Argentina are considered ideological, but only if a cleavage other than left versus right is recognized as dominant (Coppedge 1998:552). The electoral system in Uruguay is proportional representation (PR) in both chambers, while in Argentina only the lower house is elected by PR (Center for Strategic and International Studies 2007). The party lists are closed in both countries. A bill needs a simple majority in each chamber to become law in both countries.

Uruguay has been a pioneer in secularization; church and state were formally separated in 1917 (Pereira 2014). The relationship between Church and state in Argentina is less clear: Article 2 of the Argentine Constitution states that "The Federal Government supports the Roman Catholic Apostolic religion" hence it does not stipulate an official state religion nor a complete separation of church and state (The Argentina Independent 2013). However, in both countries the Catholic Church has been an outspoken opponent of abortion.

¹ Partido Colorado (The Colored Party or The Red Party)

² Partido Nacional (National party)

³ Broad Front

⁴ Justicialist Party (also called The Peronist Party)

⁵ Radical Civic Union

1.6 Contributions of My Thesis

There are various ways to contribute to the scholarly literature (King, Keohane, Verba 1994:16). The most important contribution of this thesis is the consideration for, and the separate analyses of the process-oriented and the outcome-oriented aspects of substantive representation. This research procedure offer a more comprehensive discussion of what is going on in substantive representation of women. First, the comparative analysis of the processes in both cases highlights contrasts and nuances between the cases which hopefully contribute to a better understanding of the implications of the process-oriented aspect. Second, the consideration for institutional and cultural factors in explaining the variation in policy outcome extends the scope of inquiry and account for contextual aspects. I argue that the holistic approach I apply is the main strength of this thesis. Further, the inclusion of women's movements in the analysis implies a contribution to research within social movements. The results of this analysis will be context-specific which provide valuable insights on the complexities of substantive representation of women. However, it is difficult to have both complexity and generality at the same time (Ragin 1987:54). I therefore acknowledge that the limitations of this thesis in providing generalizable results.

1.7 Structure of the Thesis

The further structure of the thesis is as follows: Chapter 2 gives a contextual overview of the issue of abortion politics in Latin America. In Chapter 3 I present the fundamentals of the theoretical framework with regard to political theory and empirical studies of women's representation. In Chapter 4 I outline the details of the research design and the analytical framework I apply in order to answer the research question, as well as information in regards of my fieldwork in Argentina and Uruguay. In Chapter 5 and Chapter 6 I analyze the findings of the process-oriented aspect of substantive representation of women: Chapter 5 accounts for *where* representation has occurred in Argentina and Uruguay, while Chapter 6 accounts for *why* attempts were made to legalize abortion, *who* were the critical actors in the legislative processes, and *how* did actors in parliaments and civil society promote the issue of legal abortion. In Chapter 7 I analyze the external factors in the attempt to explain the variation in policy outcome in Argentina and Uruguay. In Chapter 8 I draw on the implications of my findings and present my concluding remarks in four propositions. Last, I comment on the theoretical implications of my findings and suggest approaches for future research.

Chapter 2

2 Contextual Overview: Abortion politics in Latin America

2.1 Abortion Rights in Latin America and the Caribbean

Although abortion is a medical procedure, it has historically been addressed in penal codes and characterized as a crime. Around 39 % of the world's population lives in countries with very restrictive laws governing abortion (Finer and Fine 2013). The World Health Organization (WHO) states in a report from 2011 that death due to *unsafe abortion* is the cause of almost 13 % of all maternal deaths in the world. Unsafe abortion is “a procedure for terminating an unintended pregnancy carried out either by persons lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both” (WHO 2011:2). The lack of information about legal services and health provider's fears of criminal sanction contribute to more unsafe abortions (Finer and Fine 2013). In 1994, 179 countries committed to preventing unsafe abortion under the International Conference on Population and Development Programme of Action, and more than 15 countries have liberalized their abortion laws since then (Finer and Fine 2013).

The United States and most of the European countries decriminalized abortion in the period between the 1960s and 1980s, and some European Catholic countries liberalized abortion rights in the 1980s⁶ (Women on Waves 2013). However, in Latin America, the legal status of abortion has changed very little since the promulgation of modern criminal codes in the late nineteenth and early twentieth centuries (Htun 2003:142). Latin America is home to some of the most restrictive abortion laws in the world (Human Rights Watch 2005). In most of the countries in the region, however, abortion is legal if there is a risk to the life or health of the woman, a clause often referred to as the “health exception” (Vélez 2012). Although the health exception has been in the penal codes for decades, its application has been marginal due to restrictive interpretations of the concepts of health, risk, life and autonomy (Vélez 2012:22). According to the WHO, only 6 % of the countries in Latin America and the Caribbean allow for abortion on request. These countries are Cuba, Guyana, French Guyana, Uruguay, and the state of Mexico City. In Chile, El Salvador, Nicaragua and Haiti abortion is

⁶ Spain and Portugal liberalized abortion laws in the 1980s, but did not legalize abortion on request until 2010 and 2007 respectively. Italy liberalized the law extensively in 1978.

not permitted under any circumstances, and women and medical personnel risk prosecution for performing abortions (Women on Waves 2013).

The continuing criminalization of abortion in Latin America is puzzling given that many countries in Western Europe (including Catholic countries) and North America liberalized abortion laws between the late 1960s and the 1980s. One may expect such a wide international policy change to have influenced the Latin American countries, but in some cases laws grew even more restrictive. The early liberalization of abortion in Europe and the U.S may have caused a backlash effect in terms of a strong counter mobilization by the Catholic Church in Latin America against abortion. Thus, legal abortion defenders in this region face obstacles that their predecessors in the United States and Europe did not have to fight (Htun 2003). Further, Latin American countries did actually introduce legal reforms on other gender issues as divorce, domestic violence, and labour law, among others. However, abortion seems to be the only gender issue area where change has not occurred. Despite prohibition and strict regulations, Latin American abortion rates are higher than in other industrialized countries. The enforcement of punitive laws on abortion varies across countries in the region. The implications of lax enforcement means that the middle classes have access to safe abortions in private clinics, and as a consequence, many Latin American observers may not see a real need for the liberalization of abortion laws (Htun 2003:154). However, Latin America was once a vanguard in terms of abortion policies and Argentina and Uruguay had an early progress, as we shall see in the following section.

2.2 Progress in Abortion Rights in Argentina and Uruguay

The Argentine Criminal Code declared in 1922 that abortion would not be punished in cases where the woman was victim of rape. In Uruguay, abortion was completely decriminalized during an authoritarian and conservative regime in 1933, as the first of its kind outside the Soviet Union. However, in both cases, progress either slowed down or even receded. To understand this, one has to understand how decisions about criminal law reform were made. At that time, criminal law modernization was seen as technocratic, meaning that decision making was restricted to small groups. This made liberalizing changes possible, even within conservative contexts. Because the person tasked with drafting the new criminal code for Uruguay in 1933 was personally in favour of legal abortion, abortion was decriminalized. However, the Criminal Code was reformed again in 1938 after massive protests from

conservative doctors and politicians, but even the new code identified wide grounds for legal abortion and made punishments relatively light (Htun 2003:176).

Between 1995 and 1999, 27 % of the total maternity deaths in Uruguay were due to complications related to unsafe abortion (Rossi and Triunfo 2010), and official figures estimate that around 40 percent of pregnancies (460,000) per year end in illegal abortions in Argentina (HRW 2010:11). Human Rights Watch (2010) have expressed concerns for Argentine women's access to sexual and reproductive rights, and has called upon the Argentine government for necessary improvements. The last progress in Argentina was the Supreme Court ruling in 2012 which declared that abortion is not punitive in any cases of rape, and emphasized that women do not need any juridical authorization in order to realize the surgery⁷. Legal abortion has been debated in the Uruguayan Congress several times after the last transition to democracy in 1985. A reproductive health bill was approved by the House of Representatives in 2002, but lost in the Senate in 2004. In 2008, a legal abortion bill was sanctioned by both chambers in the Congress, but the President vetoed the bill. Then, in 2012, the Congress approved a bill to legalize abortion on demand within the first 12 weeks, and within the first 14 weeks in cases of rape (Women on Waves 2013). Hence, Uruguay is the only country in South America where abortion on demand is legalized. However, it should be noted that abortion is not completely decriminalized, because the Criminal Code was not amended. Abortion is only legal if the woman follows a procedure required by the law, which involves a counselling meeting with an inter-disciplinary team of health workers and a five day long reflection period before the decision is made⁸.

2.3 The Catholic Church and the Opposition to Legal Abortion

The Catholic Church has been an outspoken opponent of divorce, abortion and same-sex marriage in Western Europe as well as in Latin America. In most of the Catholic countries divorce reform came late and in connection with transitions from authoritarian regimes to democracy in the 1980s, but legalization of divorce always came before liberalization of abortion laws (Blofield 2006). The Church has been the most stable institution in Latin America, often the only survivor of various regime changes. Further, conflicts over the role of the Church have been influential in shaping the political landscape in the region (Htun 2003:80-81). In Uruguay divorce reform was made as early as in 1914. In Argentina, divorce

⁷ For further details, see Chapter 5: 5.3.2 The Ruling of the Supreme Court, 2012

⁸ To be further elaborated in Chapter 5: 5.2.2 The legislative debate in the Congress, 2002-2012

reform came four years after the last transition to democracy, in 1987. The dynamics of these political processes may be explained partly by the Church's role during the dictatorships. If the Church had been an opponent of the authoritarian regime, it became difficult for the succeeding democratic government to oppose Church doctrine. If the Church on the other hand had failed to condemn the actions of the dictatorship, this created a political space for the new government to oppose the Church in certain policy areas (Htun 2003). For instance, when the democratic government seized power in Argentina in 1983, the authority and legitimacy of the Church had been reduced due to its failure of defending human rights during the dictatorship. Hence, the new government was not afraid to confront the bishops, and the church-state conflict in the new democratic Argentina opened a window of opportunity for reformers organized around divorce (Htun 2003:79). However, abortion reform did not occur. In Argentina, nationalistic interests combined with an orthodox Catholic discourse on "family values" have historically underpinned some of the most anti-contraception and population-growth policies in the region (Human Rights Watch 2010:9). However, public opinion polls from Argentina demonstrate that the majority is against criminalization of abortion. Almost 60 % disagree with the statement that "women who abort should go to prison" (Ibarómetro 2010). The data show that there is variation between the urban and rural areas in Argentina; almost 70 % disagree with the statement in the Metropolitan area, while it decreased to 50 % in the rural areas (Ibarómetro 2010). In Uruguay, public opinion about decriminalizing abortion has increased the last 20 years; in 1993 55 % agreed that abortion should be legal, and in 2007 the number had increased to 61 % (Rossi and Triunfo 2010).

2.4 Democratic Institutions and Abortion Policies

The configuration of democratic institutions may limit or open the political space for policy-making in particularly contested areas as abortion. When the Executive enjoys a dominant position over law making, executive commitment to gender policy is necessary for change (Htun 2003). The implementation of laws, policies, and guidelines related to women's reproductive health in Argentina seems directly related to who holds the presidency. The election of President Christina Kirchner in December 2007 has not improved women's ability to exercise their reproductive and health rights, and even reversed some gains (Human Rights Watch 2010). The political cost of expressing support for abortion reform may prevent political actors from acting in this issue. A senator from the Argentine Radical Party once said that "to speak publicly in favour of abortion is impolitic" (Htun 2003:152). For instance,

Graciela Fernandez Meijide lost the governor election in Buenos Aires in 1999 after she failed to respond to charges that she supported abortion (Htun 2003:169). President Kirchner in Argentina has declared on several occasions that she is against abortion, but it is unclear whether she would actually veto a bill passed by the Congress. Argentina has enacted policies during Kirchner's presidency on other controversial issues. In 2010 same-sex marriage was legalized, despite massive opposition from the Church. Argentina thus became the first country in Latin America to grant homosexuals this right. It should be noted that President Kirchner supported this law. The former President of Uruguay Tabaré Vázquez vetoed the legal abortion bill after the Congress had voted in favour of it in 2007. While the current president José Mujica has not explicitly supported legal abortion, he has a principle of not using the presidential veto during his term.

Chapter 3

3 Theories of Women's Representation

3.1 The Concept of Representation

The understanding of the concept *representation* varies both in theory and practice according to peoples' expectations and associations. In modern democracies, the representatives are present in the absence of the people, who for practical reasons cannot be present in an assembly. The legislature is made up by elected representatives of the people. Citizens do not govern; they are governed by others (Przeworski 2010:15). Robert Dahl defines democracy as "a political system one of the characteristics of which is the quality of being completely or almost completely responsive to all its citizens" (1971:2). The question of who these governors should be and what they should do as representatives has been subjected to theoretical debates. Hanna Pitkin's *The Concept of Representation* (1967) and her dimensions of the different views on representation is essential in this regard. Even though Pitkin did not write on women's representation, scholars have in large part related her theories to theoretical and empirical studies of women's descriptive and substantive representation. Representation, in Hannah Pitkin's words, means "the making present of something which is not literally present" (1967:144). Pitkin divides the different views of representation into two categories:

- 1) "Authorization", "accountability" and "substantive acting for" are three modes of "acting for" a person
- 2) "Descriptive" and "symbolic" representation are modes of "standing for" a person

The important difference between the two categories is that views of category 1 involve activity, while views of category 2 involves passive acts of representation – a person does not have to *do* anything in order to "stand for" somebody.

While empirical studies of descriptive representation focus on factors that elect women to parliaments, studies of substantive representation have largely focused on the effect of more women in parliament on policies related to women's issues, and whether and how the women representatives present in the given legislature act on behalf of women as a group. However, Franseschet and Piscopo (2008) have advised scholars to be aware of the distinction between women's representatives' abilities and opportunities to influence the *political agenda* on the

one hand, and their ability and opportunities to influence *policy outcomes* on the other hand. The process-oriented aspects of substantive representation of women includes actions like introducing and/or supporting bills that address women's issues, establishing connections to female constituents or women's organizations, networking with like-minded colleagues, or putting women's issues on the agenda within committees or party delegations. The outcome is policy changes in terms of legislation, which is reckoned as the key act within substantive representation (Celis 2008:113).

3.1.1 Descriptive Representation

Descriptive representation considers the characteristics of the representative like sex, race, ethnicity, and so on. This dimension emphasizes the importance of a legislature selected in terms of a composition which corresponds to the nation it represents. The idea of a legislature that reflects the nation is sometimes being referred to as "mirror representation", in which the legislature "mirrors" the different groups within the boundaries of the nation. Thus, the concept refers to the proportions of women and other minorities present in elected political bodies, in which the degree of inclusiveness in a political system may be told by counting the numbers of group members present in the legislature (Pitkin 1967:60; Franseschet, Krook and Piscopo 2012:25). Pitkin (1967) refers to descriptive representation as "standing for". The representative "stands for others" on the basis of common features and characteristics that binds the representative and the constituent together⁹. Some scholars have, however, criticized the importance of descriptive representation, and argued that if the whole electorate is to be represented in the legislature in order for it to be considered fully descriptive, then all opinions, even the most absurd ones, must be present: "No one would argue that morons should be represented by morons" (Mansbridge 1999:629). On the one hand, it seems utterly important to ensure the representation of minorities; on the other hand, it is physically impossible to make present every single group in the society in one assembly.

Another critique of descriptive representation is that personal characteristics are insignificant when it comes to representing the substantive interests of constituents. For instance, Young states that "having such a relation of identity or similarity with constituents says nothing about what the representative does" (1997:354). Considering women's representation, the legislatures' lack of representational correspondence with the female population in most parts

⁹ This idea of representation influenced the development of proportional representation as an electoral system, in which the purpose is to make the legislature representative according to the society in which it operates.

of the world has been central to arguments for increasing women's descriptive representation, and to implement mechanisms that ensure the election of more women. The argument is built on justice and fairness: Since half of the population is women, half of the legislature should be women (Philips 1995). But, it is also related to an expectation that women will represent women's interests; that policy issues related to women's rights will gain greater attention if more women enter politics. These arguments are based on *essentialism*: "the assumption that members of certain groups have an essential identity that all members of that group share and of which no others can partake" (Mansbridge 1999:637). This argument considers women as a homogenous group whose common experiences bind them together. The weakness of the essentialist argument, however, is that it builds on the assumption that women share the same interests based on their sex. The essentialist view has been criticized on the grounds that sex is not an identity which necessarily precludes other identities a person may have. Furthermore, the argument implies that women are the only ones capable of representing themselves, and therefore incapable of representing other groups.

The research on descriptive representation of women has grown large over the years, and various factors have been explored in order to explain variation in women's presence in politics. The explanations are usually divided into categories which account for social structures, political institutions, ideologies and culture. The study of Inglehart and Norris (2003) shows that gender equality is more likely to be supported in post-industrial societies, by well-educated and less religious respondents. Further, research has shown that left parties are more "women friendly" than right parties (Escobar-Lemmon and Taylor-Robinson 2005). The influence of the political system and institutional factors tend to find that proportional representation (PR) is the election system that elects more women than do for instance single-member district systems, because it is more challenging for women to achieve electable positions when there is only one candidate to be elected from each electoral district (Paxton 1997; Matland and Taylor 1997; Matland 1998; Jones 2009). Legislative quotas offer the most explanatory power for women's descriptive representation today (Tripp and Kang 2008).

3.1.2 Substantive Representation

Following the theories of Pitkin (1967), the focus should be on what the representatives are *doing*, rather than who they *are*. The represented person is thus present in the action rather than in the characteristics of the actor. When considering the substantive dimension, Pitkin

addresses the substance, or content, of the activity in representing: “we are now interested in the nature of the activity itself, what goes on during representing, the substance or content in acting for others, as distinct from its formal trappings” (Pitkin 1967:114). The question is how to define this activity.

According to Celis,

The substantive representation of women is thus a process that implies a series of acts and actors: putting (and keeping) women’s interests on the political agenda; translating women’s interests, concerns and views into legislation and subsequently guiding it through the legislative process that ends with the vote; establishing a higher congruency between the interests, wishes, views and perspectives present in parliament on the one hand, and in society and amongst women on the other (2008:114).

Franseschet, Piscopo and Krook define substantive representation in a similar sense, with an emphasis on the relationship between the constituents’ interests and the acts of the representatives: “Substantive representation occurs when legislatures pursue policy goals that align with the interests and priorities of their constituents” (2012:87). Common to these definitions is the implication of *responsiveness* to the constituent’s desires. A government or a legislature is *responsive* if it adopts policies that are signalled as preferred by the citizens. Examples of these signals are opinion polls, demonstrations, letter campaigns and votes during elections (Manin, Przeworski and Stokes 1999:9). Responsiveness involves activities by the elected representatives on behalf of the constituencies, which is what substantive representation attempts to capture. As Pitkin says: “The activity of representing as acting for others must be defined in terms of what the representative does and how he does it, or in some combination of these two considerations(...)”(1967:143). Substantive representation thus captures a relationship between the represented and the representative whereby the representatives must be responsive to the represented and not the other way around (Celis et al 2008:100). This requires a representation of the group perspective in such a way that the group’s voice is articulated and heard in policy processes (Weldon 2011:32). Implicit to this process is the convergence between the wishes of the represented and the actions of the representative.

The role and position of the representative towards the represented and the other way around is theoretically contested. Saward (2006) has criticized Pitkin’s categorization of the dimensions of representation on several points. He argues that Pitkin’s focus is “resolutely on the representative rather than on the represented”, and that this approach “has encouraged theorists to underplay the subtle processes of constructing the represented” which in the end has led Pitkin to deny “the existence or legitimacy of a category of active symbolic or

aesthetic representation” (Saward 2006:300). In Saward’s opinion, to make *representative claims* is an aspect of political representation which should be reconsidered part of a “substantive acting for” which “any theory of political representation must take on board” (Saward 2006:301). Further, Saward (2006) argues that political representation is a “two-way street” where the represented play a role in choosing representatives, and the representatives choose their constituents by portraying them in contestable ways. This implies that would-be representatives make claims about themselves and their constituents and will argue that they are the best representatives of the constituency (Saward 2006:302). However, where Saward argues that claims-making on behalf of the constituents suffices to validate as “acting for others”, Severs (2012) argues that claims do not necessarily count as an activity. According to Severs, one has to differentiate between claims that are symbolic and claims that are substantive. We can concretize her point with the following example of two claims¹⁰:

- 1) The liberal party offers itself as standing for the interests of “women” to its electorate.

If we follow the logic of Severs argumentation, this is a claim which does not classify as an activity, rather, the contribution to the representation process is of a symbolic rather than a substantive nature (Severs 2012:173). It is symbolic because it is passive; it does not refer to any explicit activity on behalf of the constituents that demonstrates the liberal party’s commitment to women’s interests. Now, consider the following claim:

- 2) The liberal party offers itself as standing for the interests of “women” to its electorate by denouncing increased funding for the implementation of sexual and reproductive rights

In the last example substantive representation is expressed through the *activity* that the liberal party proposes. The important difference compared to the former example is the explicit *action* on behalf of women as a group. Although Saward (2006) makes a useful point out of the relevance of claims-making, it is appropriate to be aware of the distinction between claims that are of a symbolic character, and claims that are of a substantive character. This logic is probably what Pitkin (1967) had in mind when she divided symbolic and substantive representation into two different categories.

¹⁰ The example of the two claims is the author’s own interpretation of Severs’ examples and should thus not be read as Severs’ wording.

3.1.3 The “Missing Link” Between Descriptive and Substantive Representation

Critical mass theory has been central to the arguments for increasing women’s descriptive representation. Further, the theoretical concept relates to the assumed causal relationship between descriptive and substantive representation: that more women representatives will lead to more “women friendly” policies. The term *critical mass* was originally borrowed from nuclear physics, where it refers to the quantity needed to start a chain reaction, an irreversible turning point, a take-off into a new situation or process (Dahlerup 2006:512). Early ideas argued that an increase in women’s representation would lead to a qualitative shift and thus affect policy-making concerning women’s issues. In order for that to happen, however, it was assumed that women had to constitute a substantial amount in parliament, preferably at least 30 % of the legislators. The notion of the supposedly magical threshold of 30 % is related to the endorsed target of achieving 30 % women in all the decision-making bodies in the world by 1995, an initiative launched by the United Nations Economic and Social Council in 1990 (Dahlerup 2006:515). The target was far from met, in 1995 only 10 % of the parliamentarians in the world were women, and still, today, the percentage has only reached 21, 8 % on a world average (Inter-Parliamentary Union 2014b).

Dahlerup (1988) has argued that the critical mass perspective should be replaced by a focus on *critical acts*. An example of a critical act which empowers women in general is the adoption of gender quotas. While some scholars claim there is little evidence that the 30 % peak of women in parliament is sufficient to ensure substantive representation (Grey 2006), others argue there is enough evidence to conclude that women politicians all over the world tend to be more active than their male colleagues when it comes to placing equality policy on the political agenda (Dahlerup 2006:515). Critical mass theory has been exposed to criticism for the assumption of an automatic and linear relationship between the amount of women representatives and policy outcome, also questioning whether women’s increased presence in the legislature is in fact a sufficient or a necessary condition (Celis and Krook 2009; Weldon 2002a).

Childs and Krook (2009) highlight four possible scenarios of the effect of more women in parliament. The first scenario is that more women will influence the behaviour of their male colleagues in a positive way, thus causing male and female legislators to pay more attention to women’s issues.

The second scenario is that more women in parliament can produce a *backlash effect*; that male legislators react to the gendering of political institutions by obstructing women's policy initiatives and keeping them outside *positions of power* - power that stems from the position in an institutional structure, not the individual itself (Weldon 2002a:93). Power positions are important when considering the opportunities women have to influence policies. By conceptualizing the impact of women in terms of percentage without any concern for the structure of the institutions and the positions within which women act, scholars tend to oversimplify the way legislators interact with each other (Weldon 2002a:93).

The third scenario is that a lower proportion of women in fact may be more effective than a larger group. This effect depends on whether the few women present are able to organize themselves and work together on the issues that are important for them. For instance, women policymakers may be more likely to feel a responsibility to represent women when there are fewer of them (Devlon and Elgie 2008; Weldon 2002a:96).

The fourth scenario is that the increased number of women results in a more diverse group who, once they have achieved a satisfying level of representation in parliament, do no longer collaborate in promoting women's rights. This became the situation in Rwanda; as women's presence increased, the representatives got caught up in other political issues related to the policies of the respective parties, and thus had greater difficulties with prioritizing women's issues (Devlin and Elgie 2008). Further, being a women representative can be problematic in terms of what role they are expected to have, or the role they expect themselves to have; on the one hand they have to prove that they can represent various interests on equal terms with male representatives, and on the other hand they are expected to make a difference for women's conditions when elected (Dahlerup 1988:279). The expectation that women representatives will promote women's interests increases when women representatives are elected because of quota measures (Franseschet and Piscopo 2008).

In terms of the relationship between women's descriptive representation and the outcome-oriented aspect of women's substantive representation, Weldon (2002a) finds no correlation between the amount of women in parliaments and policy outcomes on violence against women in her cross-national study. Instead, Weldon finds that "greater policy responsiveness to the problem of violence against women is a product of the mutually reinforcing interaction between women's policy agencies and strong autonomous women's movements" (2002a:209). Except from Weldon's study, the general lack of attention to the possible

interactive relationship between women in political institutions and women's movements, combined with an assumption that women share a feminist analysis of public policy problems, has led scholars to overlook important underlying mechanisms that might help explain the success and failure of women's substantive representation as outcome. Celis et al. argue that in order to explore what substantive representation is "it is crucial to broaden the scope of inquiry to acknowledge multiple actors who are engaged in representational activities in a variety of different sites" (2008:104). In the following section I account for the theoretical foundation of this approach which is central to the analytical framework of the process-oriented aspect.

3.2 Towards an Holistic Inquiry Approach

One of the challenges when studying substantive representation of women is that there exists no consensus in the scholarly literature about the content of substantive representation of women, or the representative actions that constitute substantive representation of women (Celis 2008:112). I argue that previous studies have failed to address important questions in terms of explaining policy outcomes of women's rights. While quantitative studies offer an important indicator about the relationship between the increase of women in parliament and its effect on process-oriented and outcome-oriented aspects of substantive representation of women, the weakness of these measures is the inability to account for the specific context and process involved in each case (Mackay 2008:129). Further, they do not provide adequate explanations of the *failure* of policy developments. Recent literature suggests taking on holistic approaches that aim at opening the scope of inquiry (Celis et al. 2008). Such an approach requires researchers to put behind a-priori assumptions about actors being female legislators and activities being limited to the parliament. Because the focus has been limited to the parliament, there has been paid little attention to the potential impact of women's organizations and issue networks (Celis et al 2008; Htun 2003, Weldon 2002b). By asking where substantive representation of women occurs, who the actors are, why substantive representation of women is attempted, and how it is expressed, researchers can open up the "black box" in order to reveal information of a more descriptive and explanatory character. The conceptual framework is "thick" in the sense that it incorporates the theoretical uncertainty and contested nature of substantive representation and traces over time the critical actors, sites and dynamics in context; including institutional and gendered dimensions

(Mackay 2008:130,135). Further, this strategy allows for a consideration of contextual aspects of the processes of policy-making on abortion rights that could otherwise be ignored.

3.2.1 Where Does Substantive Representation of Women Occur?

While the conventional approach has focused on elective assemblies as the site where substantive representation of women occurs, it is likely that it takes place at various locations and contexts. Women's issues may be raised not only in the national parliament, but in cabinets, committees, women's policy agencies, NGOs, and civil society. The location where substantive representation occurs is important because it provides a platform for actors who seek to "act for" or make "representative claims" on behalf of women as a group (Celis et al 2008:105). Legislatures may not always be the best place to examine whether representation is occurring, because political institutions tend to reflect the social perspectives of the historically dominant groups that created them (Weldon 2002a). According to Weldon, the effects of women's movements have been inadequately accounted for in the policy literature; "Women's movements provide an important but generally unexplored avenue of representation for women, another important mechanism for the articulation of women's perspectives (2011:36). A women's movement should here be understood as a form of social movements, aimed at improving the conditions for women (Weldon 2002a:62). Characteristic for social movements is that "they share the force of morality and a sense of (in)justice in individual motivation and the force of social mobilization in developing social power" (Fuentes and Gunder Frank 1989:181). Women's movements can contribute to the process-oriented aspect through activities like lobbying, the formation of policy networks, activities aimed at changing attitudes, conduct discussions, street protests and the like (Weldon 2002a:68-69). In turn, such activities may be influential for policy outcome.

Weldon finds that "strong, independently organized women's movements improve government responsiveness to violence against women. In fact, women's movements are a necessary condition for the articulation of this issue" (2002a:61). Her findings suggests that women's policy agencies and women's movements provide effective avenues of expression, giving women a stronger voice in the policy-making process than women in the legislature have. According to Weldon, "autonomous organizations must be self-governing, and recognize no superior authority, nor be subject to the governance of other agencies" (2002b:1161). Women's caucuses, on the other hand, are purely political expressions, formed as an agreement between parliamentarians from various political parties. Even when women's

caucuses adopt a formal structure, it is the result of the political will by the legislators and their attempts to establish alliances that transcend party lines in order to achieve goals within gender policies (Johnson and Moreni 2010:10-11). Whether female legislators communicate with the women's movements is part of substantive representation as process (Franseschet and Piscopo 2008:415). In Argentina, women representatives worked together within the Congress as well as with women's movements outside the Congress when promoting the adoption of the *quota law* in 1991 (Krook 2009). Another venue where substantive representation of women may occur is the courts (Celis et al. 2008:105). The ruling by U.S. Supreme Court in 1973 in *Roe v. Wade* was a landmark decision on the issue of abortion. In short words, the Court ruled that the right to have an abortion is protected by the constitutional right to privacy.

3.2.2 Why is Substantive Representation of Women Attempted?

The existing literature assumes that women representatives will promote women's issues on the basis of those interests that women have in common, consistent with substantive representation as acting in a manner responsive to the represented (Pitkin 1967:209). Substantive representation should be considered a process of interest articulation during which a multitude of interests and perspectives may be formulated (Celis et al. 2008:106). The aims and motivations for legislating on abortion rights can be various, and it is in this regard interesting to investigate how the issue is being framed, i.e. as a women's right, if it is related to health rights and social justice arguments, and whether promoters place the issue in an international context. To capture this dimension by empirical analysis requires attention to the discourses used by abortion rights promoters, both in the parliament and civil society. The framing of arguments in a manner that convince legislators to vote in favour of legal abortion is central. Díez finds that gay and lesbian activists in Buenos Aires and Mexico City "crafted a collective action frame around the importance of human rights to the deepening of democracy and as a fundamental right to equality" which appeared to have been effective in obtaining legislative support (2013:222).

3.2.3 Who Acts in Substantive Representation of Women?

Celis et al. (2008) suggest reconsidering the conventional assumptions that women are the main actors, and that more women representatives is a sufficient condition for creating

positive effects on policy making. They suggest instead to identify *critical actors*, here defined as “individuals who initiate policy proposals on their own, even when women form a small minority, and embolden others to take steps to promote policies for women” (Childs and Krook 2009:528). Critical actors may operate on their own or in a group, succeed or fail in efforts to promote women’s concerns and be male or female (Childs and Krook 2009:140). Who these critical actors are remains an open question, and requires attention to a wide range of possible players, including male and female legislators, ministers, party members, bureaucrats, and members of civil society groups (Celis et al 2008:104). Mackay also suggests to include as critical actors “those individuals and groups who may resist and stymie change; in other words those who act as “norm reactionaries” (2008:131).

The findings of previous studies do demonstrate that women representatives are an important force behind the promotion of women’s issues, that is, acts that are related to enforce substantive representation as process. Wolbrecht (2002) finds that female representatives were responsible for the growth of women’s rights in the US Congress in the period 1953-1992, including abortion rights. At the same time, Weldon (2002a) finds no linear relationship between the proportion of women legislators and government responsiveness to violence against women. Further, the success rates for approving women’s rights bills are lower than the average of bill approval in the Argentine Congress. The frequent introduction of bills within the category of women’s issues, do not always translate into legislation (Devlin and Elgie 2008). A study of the Argentine Congress finds that as women’s presence in both chambers has grown, women and men representatives have introduced more bills relating to women’s issues. However, the approval rates of these kind of bills were greater when women representatives were fewer in number (Htun et al. 2013), which suggests that even if women’s representation does matter in terms of increased legislative activity on women’s rights, high representation of women is not a sufficient condition for changing policy outcomes. In Uruguay, women representatives are in general more active than their male colleagues in promoting women’s rights, and they are more likely to introduce bills with content related to gender issues (Johnson 2006).

Another perspective is to question whether actors are in fact responding to women’s interests or if there are other motivations for their acts. Political actors are strategic players and their actions might have explanations other than what seems to be the case. Policy reforms often occur within a broader field of political interests. To presume a-priori that women’s interests are the main reason behind policies that concern women, may lead us to overlook important

events in a much wider context (Celis et al. 2008:106). For instance has the explicit support of the quota bill by President Menem in Argentina been questioned in terms of whether it was a response to feminist demands and a sincere concern for women's representation, or an attempt to ensure more support by women for his political party¹¹.

3.2.4 How is Substantive Representation of Women Expressed?

The conventional approach towards this question has been that substantive representation is being expressed through legislation, and that distinct policies are the result. While voting records of male and female legislators measure legislative behaviour, this measure has been criticized with the argument that voting in favour of women's issues is a matter of prioritizing one policy to its alternative, thus this kind of "activity" is of a more symbolic character than partaking actively in the legislative process. In order to document commitment, it is more useful to consider activities like drafting bills, participating in public debates, and lobbying legislators and colleagues. When studying women's movements, one also has to consider the activities these movements propose in order to get support and change public and political attitude when necessary. Celis et al argue that "it is necessary to explore interventions at various points in political processes" and that scholars should "treat failed and successful attempts at policy change by actors in a broad range of policy arenas, as various instances of substantive representation of women" (2008:107). As mentioned previously, the distinction between substantive representation as outcome and process will be beneficial when assessing the various activities. The comparison between attempts that leads to successful legislation and attempts that fail to lead to any legislation may represent a useful contribution to the studies of substantive representation of women.

3.2.5 What About the External Factors?

Feminists have long argued that conditions of oppression are due to macro level social structures like institutions, rules and norms (Htun 2005:160). Htun and Power finds that there is a "large gap between legislator's attitudes toward gender-related policy and actual policy outcome" (2006:83). Further, studying abortion rights in Catholic countries requires a consideration for the political influence of the Church (Htun 2003, Blofield 2006). With regards to the effect of social mobilization, it is fruitful to also account for the strength of

¹¹ See Krook 2009:170

countermovements – in this case anti-abortion movements - as a counterforce to the women's movement (Díez 2013). Liberal and progressive opinions on abortion rights may further correspond to party membership more than sex (Htun and Power 2006). Hence, factors of this character may have important implications for policy outcome.

3.3 Defining Women's Issues: Legal Abortion

When studying substantive representation of women we need to be clear about what acting for women means. Women's interests are contextual, fluid and subject to contestation, rather than essential, static and easily agreed upon (Franseschet et al. 2012). Abortion is a very sensitive issue that causes severe moral outrage in many levels of the society. Many do not consider abortion a women's right, rather a matter of the right to life. However, one may argue that underlying both views on abortion, the pro-life and pro-choice, lays the perception of *motherhood* which is elective according to the pro-choice position and compulsory according to the pro-life position. When the state criminalizes abortion, it tells women that pregnancy must take precedence over their other choices while at the same time neglecting to impose the same responsibility on men (Htun 2005:162-163). Several studies of substantive representation of women include reproductive rights and bills supporting abortion reform in their operationalization of women's issues (Franseschet and Piscopo 2008; Franseschet 2010; Schwindt-Bayer 2006). Schwindt-Bayer defines women's issues as follows:

Women's issues are those directly affecting women that are widely supported by feminist groups and women's organizations including concerns such as reproductive health freedoms, domestic violence protections, gender equality legislation, civil rights for women, sexual harassment policy, and equal pay for equal work. Some women's issues cross into other thematic categories, but if they target women directly (e.g., sexual harassment or reproductive health), then they are women's issues (2006:571).

Reproductive rights were clarified and endorsed internationally in the Cairo Consensus that emerged from the 1994 International Conference on Population and Development. This constellation of rights embraces fundamental human rights and include, among others, the right to decide the number, timing and spacing of children, the right to the highest attainable standard of health, and the right to privacy (United Nations Population Fund 2014). With regards to the "legalization of abortion", this term should here be understood as decriminalizing abortion on demand, including the provision of public funding of health services so that abortion is available on equal terms for all citizens.

Chapter 4

4 Analytical Framework

4.1 Analytical Approach

The distinction between process-oriented and outcome-oriented aspects of substantive representation of women is at the core of my research design. If we regard the outcome of abortion rights as a measure of success or failure in substantive representation of women, we are dealing with one case of a failed attempt at legalising abortion (Argentina), and one successful case (Uruguay). However, the situation may be different with regards to the process-oriented aspect; our knowledge about the outcome does not tell us anything about to which extent abortion rights have been promoted in the two cases prior to the outcome.

I would argue that an explanation of policy outcome that draws from findings related to the process-oriented aspects *and* the external factors increases the likelihood that this thesis contributes to new perspectives within the scholarly literature on substantive representation of women. The analysis is two-folded: first I compare the process-oriented aspects of women's substantive representation related to the promotion of legal abortion in Argentina and Uruguay. By comparing the processes, I am able to assess the implications of the various elements which increase our understanding of 1) the dynamics of the process-oriented aspects and 2) to what extent these aspects have affected the variation in policy outcome of abortion rights. Secondly, I assess the impact of *external factors*; institutional and cultural factors that constrain the opportunity structures of the legal abortion bill. The importance of including these factors appeared while I was collecting data for the analysis, which implies that this part of the analysis is highly inductive and guided by the empirical findings.

4.2 Conventional versus New Approaches

My assumption is that substantive representation works through a variety of *causal mechanisms* that are difficult to reveal through quantitative measures. I therefore employ a *qualitative in-depth process-tracing research design* and analyse the legislative processes through the identification of the following four analytical elements: 1) the sites where decriminalization of abortion is being discussed and claims are represented, 2) why legal abortion is being promoted, 3) who are the critical actors who act for legal abortion, and 4)

how the issue of legal abortion is expressed through activities promoted in the legislature and by the women's movement.

While conventional approaches within the research field of substantive representation of women have focused on women representatives in the parliament, the new approach suggested by Celis et al. (2008) opens for the possibility that men representatives are potential actors, and that parliaments are not the only sites where substantive representation occur. Hence, I argue that it is necessary to explore interventions at various points in the political processes to identify claims, actions and the outcomes of the attempt to legalize abortion in Argentina and Uruguay:

In contrast to the research strategy implicit in other studies, this approach enables – and in fact requires – scholars to treat failed and successful attempts at policy change, by actors in a broad range of policy arenas, as various instances of substantive representation of women (Celis et al 2008:107).

Table 4.1 gives an overview of the different elements in the conventional approach and the new approach.

Table 4.1: Conventional versus New Approaches

Conventional Approaches	New Approaches
<ol style="list-style-type: none"> 1. Women are the actors 2. Elected assemblies are the sites 3. Women's interests are the reason 4. Distinct policies are the result 	<ol style="list-style-type: none"> 1. Who acts in substantive representation of women? 2. Where does substantive representation of women occur? 3. Why is substantive representation of women attempted? 4. How is substantive representation of women expressed?

Source: Celis et al. (2008)

By investigating these elements further, I hope to demonstrate how and to what extent the various mechanisms have been in effect in the two processes. I argue that this comparison allows for a nuanced analysis of the process-oriented aspects.

4.2.1 Indicators of the Process-Oriented Aspect

In **Table 4.2** I have listed the indicators that demonstrate how I measure the various elements of substantive representation of women as process in this analysis. The indicators function as

guidelines of the causal mechanisms. In the following sections I operationalize each element of the “who, where, why and how”-framework.

Table 4.2: Indicators of the process-oriented aspect

Where does SRW¹² occur?	Why is SRW attempted?	Who acts in SRW?	How is SRW expressed?
<ul style="list-style-type: none"> - national and local legislatures -courts -social movements and women’s movements 	<ul style="list-style-type: none"> -interest formulation -framing of issues -discourse -claim making 	<ul style="list-style-type: none"> - male and female legislators -party members -members of civil society groups - The executive 	<ul style="list-style-type: none"> -drafting bills -participating in public debates -lobby activities -information work

Source: Celis et al. (2008)

Where does substantive representation of women occur?

This indicator traces the potential sites where substantive representation of women occurs and includes the following sites: The national legislature, social movements and women’s movements, courts, and local legislatures. To what extent the various elements are treated in each case depends on whether the specific site appears to have been subjected to activity of such a character that makes it interesting to study. For example, if a court or a local legislature has actively treated the issue of legal abortion in a manner that has contributed to public and political debate in the given case, I include it in the analysis. Of course, more sites could have been included by this indicator. For instance, it is likely that there are hospitals and medical personnel that are defending and promoting abortion rights. Again, the limitations of this inquiry make it necessary to delimit the scope of sites.

Why is substantive representation of women attempted?

The third indicator seeks to outline why decriminalization and/or legalization of abortion is attempted. I here evaluate the framing of arguments by abortion rights promoters and the nature of discourse in parliamentary discussions in the two cases. I aim for making visible the

¹² Substantive Representation of Women

reasoning behind the efforts by abortion rights activists, while at the same time comparing the strategic arguments in each case in order to discover variation that may have affected the outcome in Uruguay or the failure of outcome in Argentina. The central question is whether Uruguayan legislators or social actors frame the issue differently than their Argentinean colleagues. Through a discourse analysis of central documents I have developed four categories which divide the arguments with respect to: *Human rights, social justice, public opinion and international law and commitment*. Data for this indicator is based on an analysis of documents related to the legislative processes in each case which I got access to; the document of the draft law that was discussed in the legislative committee in Argentina in 2011 (Proyecto de Ley 0998-D-2010:2010), and transcriptions from the hearing by the Special Committee in the Uruguayan Congress in 2012 (See Appendix III).

Who acts?

The “Who acts?” indicator traces the various actors who promote abortion rights in Argentina and Uruguay, first and foremost considering the role of male and female legislators, and members of civil society groups. Further, the aim of this indicator is to capture specific critical actors: someone “who act individually or collectively to bring about women-friendly policy change” (Childs and Krook 2009:127). I consider important those actors who have contributed - through explicit actions - to advance the legislative discussions of abortion rights. One can argue that critical actors appear both as promoters and as opponents, affecting each other’s scope of manoeuvre and hence creating an interesting dynamic for studies about substantive representation of women. Due to the scope of this thesis, however, I am careful with including too many potential actors beforehand; instead, I evaluate the importance of the various actors as they appear during the data collection. However, I take into account that political actors are strategic actors whose interests are often conflated and the motivation behind their actions are not always what they appear to be. Hence, I consider the evaluation of political bargaining to be of importance in the assessment of critical actors.

How is substantive representation of women expressed?

The fourth indicator traces how substantive representation of women is expressed. I include various elements that relates to *substantive representation as process*, understood as activities like drafting bills, participating in public debates, lobbying and information work. These activities are generally performed in parliament and by civil actors (social movements). While

some might argue that voting records should be included by this indicator, I choose not to put too much emphasis on voting behaviour. This is because I do not regard it as a sufficient measure of an *expression of substantive interests*; voting merely requires the legislator to make a stand in favour of “yes” or “no” but tells us nothing of the representative’s commitment for the particular issue. Thus, only activities that require explicit and deliberate actions are included by this indicator.

4.3 Case Study Research

A central concern when conducting an inquiry is the selection of the method that provides the best tool in order to answer the research question. According to Tarrow, there has been a tendency in comparative politics to choose a particular method because it seems the “One Best Way” to do research (2010:252). A place to start is to consider the framing of the research question. My research question is: *How do the different elements of the process-oriented aspect of representation explain the variation of outcome in legal abortion in Argentina and Uruguay? What other external factors can be identified?* Research questions which begin with “how” and “why” are of an explanatory character and suitable for case study research methods (Yin 2009). Yin defines *case study* as an empirical inquiry that 1) investigates a contemporary phenomenon in depth and within its real-life context, especially when 2) the boundaries between phenomenon and context are not clearly evident (2009:18). The overall phenomenon in this analysis is the policy outcome of legal abortion in Uruguay, and the failure of policy outcome in Argentina. The legislative processes in both cases are implicit to this phenomenon, which I investigate in depth through a qualitative methodology and within its real-life context through fieldwork. The way I understand the concept of “context” is related to fluid aspects like women’s descriptive representation, institutions and culture *within* the nations, and is not limited to the static boundaries *of* the nations. A primary virtue of the case study method is precisely the depth of analysis that it offers; the detail, richness, completeness, wholeness or degree of variance that is accounted for by an explanation (Gerring 2004:348). Further, case studies are well suited to produce context-dependent knowledge which is invaluable in order for the researcher to advance from a beginner’s level to an expert level (Flyvbjerg 2006:222-223).

4.3.1 Are the Results Generalizable?

Naturally, it is tempting to aspire for results which give indications towards a more general knowledge of substantive representation of women. Case study research has been subjected to numerous debates of whether the results produced by this method are generalizable to a larger population (King, Keohane and Verba 1994; Gerring 2007; Flyvbjerg 2006; Lijphardt 1971). Gerring argues that the purpose of case study research is – at least in part - to *shed light on a larger class of cases* (2007:20). Flyvbjerg argues that it is a misunderstanding that one cannot generalize on the basis of a single case:

One can often generalize on the basis of a single case, and the case study may be central to scientific development via generalization as supplement or alternative to other methods. But formal generalization is overvalued as a source of scientific development, whereas “the force of example” is underestimated (2006:228).

The central question is what prerequisites I have, based on my empirical research of two cases, to consider the results to be valid for other cases. I acknowledge the limitations of this thesis in producing generalizable results, given the fact that the cases are prone to be highly related to contextual factors. Because the cases are situated closely within the same geographical region I do not consider the results to automatically apply to cases in, for instance, an Asian or African context. However, this assessment depends on how and whether the findings relate to the country-specific context.

4.3.2 Do We Test or Generate Hypotheses?

The world of social science may be divided according to the predominant goal undertaken in a given study, either hypothesis *generating* or hypothesis *testing*. Case studies are useful when a subject is being encountered for the first time or in a new way, thus comprising “the first line of evidence” (Gerring 2007:39-40). According to Gerring, case studies lean toward Type 1 errors (falsely rejecting the null hypothesis) and are more likely to be paradigm-generating (2007:41)¹³. Thus, evidence from case studies serve to falsify a necessary or sufficient hypothesis, and are useful for elucidating causal mechanisms. General theories do not usually offer detailed and determinate predictions on within-case variation that would allow one to reject a hypothesis. Theory-testing is thus not the case study’s strong suit. I will therefore be

¹³ However, Flyvbjerg argues that since one can actually generalize on the basis of individual cases, “the case study is useful for both generating and testing of hypothesis but is not limited to these activities alone” (2006:229).

careful with drawing conclusions about the capability of the theoretical arguments to explain the phenomena based on this one study. Hence, I do not aim for rejecting or approving theories, however, my ambition is to use existing theories and new empirical findings to shed light on various aspects related to the concept of substantive representation of women. Hopefully, this will provide for a small, though progressive contribution to the research field of substantive representation of women.

4.3.3 Internal and External Validity

Questions of validity are often distinguished according to those that are *internal* to the sample under study and those that are *external*. While the first refers to the ability to establish causal relationships within the case under study, the latter refers to the problem of representativeness between sample and population (Gerring 2007). Case study research is generally weaker with respect to external validity compared with cross-case studies, given that “it includes a small number of cases of some more general phenomenon” (Gerring 2007:43). Regarding the problem of representativeness, I cannot claim the sample of two cases to be representative for a larger population on general grounds. However, two cases improve the external validity in contrast to one case. Given that Latin-American countries share some historical, cultural and political aspects, the cases are to some extent representative of the region.

However, the virtue of the case study is its internal validity, understood as “the degree to which descriptive or causal inferences from a given set of cases are correct for those cases” (Brady and Collier 2010:334). Threats to within-sample validity are more disturbing to case study researchers than threats to out-of-sample validity (Gerring 2007:43). Internal validity is mainly a problem for explanatory studies, when an investigator is trying to explain how and why event x led to event y : “If the investigator incorrectly concludes that there is a causal relationship between x and y without knowing that some third factor – z – may actually have caused y , the research design has failed to deal with some threat to internal validity” (Yin 2009:42). Further, the researcher has to deal with the problem of making inferences – the process of using data to draw broader conclusions about concepts and hypotheses that are the focus of research (Brady and Collier 2010:333). Questions of the type “is the inference correct?” and “have all the rival explanations and possibilities been considered?” are central in the process of achieving internal validity. I argue that the internal validity of this study, or the ability for specifying correct causal relationships causing policy outcome, is high.

4.4 Explaining-Outcome Process-Tracing

Process-tracing involves “attempts to identify the intervening causal process – the causal chain and causal mechanism – between an independent variable (or variables) and the outcome of the dependent variable” (George and Bennett 2005: 206-7). The ambition of *explaining-outcome process-tracing studies* is to craft a minimally sufficient explanation of a particular outcome, with sufficiency defined as an explanation that accounts for all of the important aspects of an outcome with no redundant parts being present (Beach and Brun Pedersen 2013:18). Thus, while studying mechanisms that for instance *cause* substantive representation as process, this analysis also attempts to explain a particular outcome; the policy outcome of legal abortion. Explaining-outcome process-tracing is capable of confirming or disconfirming the minimal sufficiency of a mechanism in a single-case study, however, one should be careful with drawing conclusions for a broader population given the context-sensitivity of this kind of inquiry (Beach and Brun Pedersen 2013:93). The research method is *case-centric*, that is, based on the belief that the social world is very complex, multifactored, and extremely context-specific. While acknowledging that producing generalizable knowledge is difficult, the ambition is instead to account for particularly puzzling outcomes (Beach and Brun Pedersen 2013:13). The method might resemble historical scholarship, but according to Beach and Brun Pedersen it is still social science, as the ultimate explanation usually involves more generalized theoretical claims than historians feel comfortable with (2013:19). The inductive path, which I propose for this study, is often used when examining a little-studied outcome (Grønmo 2004:38). The researcher works backwards from the outcome by searching through evidence in an attempt to uncover a plausible sufficient causal mechanism that produced the outcome. This is a bottom-up type of analysis, using empirical material as the basis for building a plausible explanation of causal mechanisms whereby X (or multiple Xs) produced the outcome (Beach and Pedersen 2013:20).

4.4.1 Causal Mechanisms

Essential to my inquiry is thus the search for *causal mechanisms*. A causal mechanism should here be understood as a “theorized system that produces outcomes through the interaction of a series of parts that transmit causal forces from X to Y” (Beach and Brun Pedersen 2013:176). The identification of causal mechanisms is, in other words, the study of how and whether X is

connected to Y. While large-N studies may find correlations and covariation between X and Y, they are incapable of demonstrating the nature and reason of the correlations. According to Gerring, “causal arguments depend not only on measuring causal effects. They also presuppose the identification of a causal mechanism” (2004:348)¹⁴. With the use of process-tracing method I trace the complex conglomerate of systematic and case-specific causal mechanisms of substantive representation as process and outcome Uruguay and Argentina.

4.5 Case Selection: Argentina and Uruguay

The case selection of this analysis is a result of several considerations. Given that Latin America has had notable progress with regards to increasing women’s descriptive representation in political institutions I considered this region of particular relevance. At the same time that as I was doing the preliminary research for this project, Uruguay’s Congress passed a bill that legalized abortion. Uruguay is an interesting case in the Latin American context for two reasons: First, it is one of the countries in the region with lower female representation in the Congress. Second, it is one of few countries in the region where abortion is now legal on demand. The event led me to investigate further the state of abortion policy in Argentina, where I found that in spite of a high level of women’s descriptive representation in the Congress, social demand for abortion rights and several attempts to bring the issue to the Congress, there has not been any successful progress in terms of policy outcomes. The foundation of the puzzle was made: If the amount of women in parliament is believed to have any impact on legislation related to women’s issues, how come that a legislature with women’s representation way below the world average sanction a legal abortion bill in a region associated with strict abortion policies, while a legislature with women’s representation way above the world average continue to struggle with this same issue? I limit the time framing of the analysis to the legislative process and policy outcome of legal abortion in Uruguay in 2012, and the legislative process in Argentina which ended in the Criminal Law Committee in 2011.

¹⁴ According to King, Keohane and Verba, we can define a causal effect without understanding all the causal mechanisms involved, but we cannot identify causal mechanisms without defining the concept of causal effect (1994:86).

4.6 Collecting the Data Material

The case study's unique strength is its ability to deal with a full variety of evidence – documents, artefacts, interviews and observations (Yin 2009:11). Interviews make particularly good evidence for process-tracing research, which form a valuable, if also imperfect, source of systematic evidence (Bleich and Pekkanen 2013:85). The primary source of data in for the analysis is the interview data¹⁵ which I collected during my fieldwork in Argentina and Uruguay in the spring 2014. I conducted in total 14 in-depth interviews in Buenos Aires and Montevideo, seven in each city. The sample of respondents¹⁶ ranges from local and national legislators, previous legislators, and political activists and women's rights activists.

I have supplied the interview data with newspaper articles as well as several sources of documents which I collected during my fieldwork. I got hold of printed copies of transcriptions of the legislative debate from the special committee that treated the bill in Uruguay (Appendix III), and the document of the legal abortion bill in Argentina from 2010 was available online (Proyecto de Ley 0998-D-2010:2010). Further, I received copies of various publications by social movements about abortion rights and women's representation. Additional sources are reports from Human Rights Watch (2005, 2010), and statistics from Ibarómetro (2010).

4.6.1 Doing In-Depth Interviews

One of the most important sources of case study information is the interview, which are guided conversations rather than structured queries (Yin 2009:106). The researcher encourages the interviewees to reflect on events they have experienced (Rubin and Rubin 2012:2). While surveyors are trying to generalize relatively simple information, the qualitative interviewers are trying to learn about complex phenomena. One of the goals of interview design is to ensure that the results are deep, detailed, vivid and nuanced (Rubin and Rubin 2012:76). The interviews I have conducted are of an *in-depth* character; the researcher can ask key respondents about facts as well as their opinion about events (Yin 2009:107).

I developed one general interview guide with open-ended questions and in addition, a guide with more specific questions so the interviews could be adjusted according to the respondent.

¹⁵ Interview Guide: Appendix II

¹⁶ List of Respondents: Appendix I

For example, some questions were directed more specifically to activists, while others were directed specifically to legislators. The interview guide was developed according to the four elements in the “who, where, why and how”-framework. I prepared the interviews in Spanish, because I knew from experience that most Argentineans and Uruguayans prefer to speak their own language. I was concerned that if I insisted to have the interviews in English, respondents would at best be constrained from speaking fluently about the issue due to the lack of sufficient English skills, or in the worst case they would avoid the whole interview situation. However, even with fairly good Spanish skills, I realized that it would be challenging given the advanced terminology. I therefore recorded every interview so they could later be transcribed in order for me to read through the material afterwards¹⁷. Of course, technical problems tend to appear, and the sound quality of some of the interviews was poor and thus difficult to transcribe. However, I took some additional notes when I could, although I preferred to pay attention to the respondent and the flow of the conversation instead of my notebook.

My experience with doing the interviews was in overall good and the respondents seemed to appreciate that the interviews were held in Spanish. However, I did sometimes feel constrained from asking the right follow up questions, and at times I worried that the respondents might have misunderstood my comments and vice versa. That being said, interviewing went gradually more fluently and I was soon able to liberate myself from the written interview guide and follow the flow of the conversation. My overall impression was that respondents spoke both freely and enthusiastically about the issue, and it was sometimes challenging to lead the interviews in the direction I had planned due to the engagement of the respondent. In one case, the interview lasted for more than one hour; however, I had only got to ask three questions. Nevertheless, the answers to my questions were often embedded in the conversation.

4.6.2 Sample of Respondents and Selection Bias

Random sampling is not needed in process-tracing, when the purpose is to use interviews to generate hypotheses (Lynch 2013:40). The respondents in my sample were chosen mainly for their engagement with promoting abortion rights, as I wanted information about how actors work in order to raise awareness and achieve progress on abortion rights. Thus, I used a

¹⁷ I am responsible for the translations

purposive sampling technique which involves “selecting elements of a population according to specific characteristics deemed relevant to the analysis” (Lynch 2013:41). I attempted to find respondents who did not share the same background, work place, or party membership thus avoiding to “become trapped within a network of interlinked respondents who see the world through the same lens” (Bleich and Pekkanen 2013:87). Since I am not evaluating the moral and ethical questions related to abortion, I found it less important to interview respondents with anti-abortion views. However, two of the Uruguayan legislators who were members of the special committee assigned to treat the bill in 2012 are abortion opponents. With regards to gender balance, I did not achieve any interviews with male legislators in Argentina despite my efforts. However, four of the respondents in Uruguay were men. Hence, I accomplished to balance the sample to a certain degree. With a larger time frame of research at hand, the sample could have been elaborated further. However, I argue that given the limitations of my time disposal the selection bias in the sample is relatively low. People are more willing to talk in depth if they conclude that you are familiar with and sympathetic to their world (Rubin and Rubin 2012). During all the interviews I was very cautious about my personal opinions about abortion and I avoided discussions related to moral and ethical questions. It was important for me to act professionally and establishing confidence with all the respondents.

4.6.3 Qualitative Interviews in Buenos Aires

In Buenos Aires I achieved in total seven interviews, where one of the interviews were performed via e-mail correspondence. Already established contacts were useful with regard to supplying me with names of potential respondents, who I contacted once in Buenos Aires. It was through my own research I discovered and contacted the social movement *La Campaña Nacional por el Derecho al Aborto Legal, Seguro y Gratuito*¹⁸, and managed to interview activists affiliated with this movement. I also accomplished to interview Maria Rachid – a local legislator in the City legislature of Buenos Aires who was central in the legislative process of legal abortion in the local legislature. Activists on the local level were enthusiastic about informing about their work. For instance, I got in touch with members of Partido Obrero¹⁹ by coincidence, as they were selling the fanzine on a street corner in Buenos Aires. They invited me to a meeting where Vanina Biasi – a central representative from Partido

¹⁸ The National Campaign for Legal, Safe and Free Abortion

¹⁹ Worker’s Party

Obrero - was to talk about legal abortion. I went there and got an appointment with Biasi the following week. However, it turned out to be difficult to achieve interviews with current national legislators. I contacted in total 10 national legislators, including male legislators who were central in the legislative process in 2011. Even though I received some positive feedbacks, and promises of interviews, I did not achieve to get any appointments in the end.

An interesting observation I made was people's awareness in general of the distinction between being "in favour of abortion" and being "in favour of *legal* abortion". Many times respondents or other people who I met, especially in Argentina, corrected my formulations and emphasized that "we are not in favour of abortion; we are in favour of *legal* abortion". I found this observation to be interesting and interpret it as a result of the conflict between the proponents of legal abortion and the anti-abortion movement which causes a situation where it is crucial to use the correct terms in order to get support for the issue.

4.6.4 Qualitative Interviews in Montevideo

I had only four days of doing fieldwork in Montevideo, and I was concerned that I would not be able to achieve as many interviews as I would like to due to the time perspective. However, in the course of three full days I conducted 7 interviews and attended one seminar, "Estado de situación y desafíos en aborto, salud sexual y reproductivo en el departamento de Salto", organized by Mujer y Salud en Uruguay²⁰ (MYSU). MYSU is a social organization which I got to know doing online research, and I interviewed the director of the organization Lilian Abracinkas. I also interviewed six deputies in the Congress²¹; five of these were members of the legislative committee that treated the bill in 2012. Amongst the respondents is Iván Posada from *Partido Independiente*²²; key actor in the political bargaining of the formulation and the approval of the law. In general, it was easier for me to get interviews with political actors in Montevideo than in Buenos Aires.

²⁰ Women and Health in Uruguay

²¹ I am very grateful for the first hand assistance by Ismael Aparicio who contacted the members of the committee and informed them about my arrival.

²² Independent Party

Chapter 5

5 Process: Where does Substantive Representation of Women Occur?

5.1 Analyzing the Process-Oriented Aspect

I begin the analysis of the process-oriented aspect with describing *where* efforts in favor of legal abortion have been made in Argentina and Uruguay. The sites I have included vary in the two cases based on the criteria that the included events have had an impact on the general debate on abortion rights. In Argentina, substantive actions for the legalization of abortion have been outplayed in both local and national legislatures, in civil society and in the Supreme Court. In Uruguay, important activities have occurred in the Congress and in civil society. In order to give an orderly introduction to the cases, I will present the findings in this chapter according to each case; first I present findings from Uruguay which is the positive case, and then I present the findings from Argentina which is the negative case. In Chapter 6, I analyze the findings related to the three remaining analytical elements of the process-oriented aspect in the following order: why substantive representation of women is attempted, who acts and how it is expressed. Findings from both countries are in Chapter 6 presented in a comparative manner in order to highlight the complexity and nuances of substantive representation of women as process.

5.2 Uruguay

Uruguay has for a long time had one of the lowest levels of women's representation in the Congress in the region (Johnson 2006:173). In 1999, however, there was an important advance when women representatives reached 15 in total in – 3 senators and 12 deputies. The women's caucus *Bancada Bicameral Femenina* (BBF) was established in the Congress in the year 2000. With the exception of Brazil, where a similar caucus was established in 1988, the Uruguayan BBF was the first forum specializing in a cross-party articulation between women representatives in a Latin-American country (Johnson, Moreni and Balsa 2010:10-11). The original intention of this women's caucus was to promote a legislative agenda to defend women's rights and tackle gender inequalities in all areas of social, economic and political life (Johnson 2013a). The caucus does not have a hierarchical structure, but is based on the notion of unity and respect for the differences and limitations of the members. Today, the BBF

consists of all the 15 women representatives present in the Congress. Despite the continuous underrepresentation of women in the Uruguayan legislature, the BBF have exerted substantial influence over public policies and maintains coordinating activities with state organisms and social organizations (AmericaLatina Genera 2013). However, the BBF did not take actively part in the legislative process of the legal abortion bill (Lauraga 2014 [interview]). The representatives of the BBF collaborate and promote issues only when there is a consensus between the members. For instance, the BBF take initiatives and work together in issues like violence against women, an issue where representatives from the whole ideological spectre stand united. In the case of legal abortion, an issue that is more sensitive to factors like ethical and religious convictions, the BBF members did not reach any agreement to take actions on behalf of the group (Lauraga 2014 [interview]). Given the low amount of women representatives in the Congress, and that the women's caucus was not active during the legislative debate of the legal abortion bill, it seems that the effect of women representatives in the Uruguayan Congress was rather insignificant for the legalization of abortion.

5.2.1 The Legislative Debate in the Congress, 2002-2012

On 26 September 2012 the Congress voted in favour of decriminalizing abortion on demand. However, the law requires that women follows a certain procedure stipulated by the law, which involves mandatory counselling with an inter-disciplinary medical team which is followed by a five day reflection period before the final decision is made by the woman. Since the return of democracy in 1985, several attempts have been made to eliminate the article in the criminal code that penalizes abortion (Posada 2014 [interview]). The first legal abortion bill in democratic Uruguay was introduced in the Congress in 2002, introduced by Iván Posada from *Partido Independiente* (Posada 2014 [interview]). The House of Representatives approved the bill in 2004, but the Senate voted against it. In 2005, the left-wing coalition *Frente Amplio* won the majority of the seats in the Congress for the first time, and representatives introduced a legal abortion bill in 2008 (Lauraga 2014 [interview]). Although the bill was approved in both chambers in the Congress, President Tabaré Vázquez (*Frente Amplio*) who opposed abortion for ethical reasons, vetoed the law and put an end to the legislative debate in his presidential period (Michellini 2014 [interview]).

In the presidential and congressional elections in 2009, *Frente Amplio* maintained their position in both the Executive and in the Congress. The new President, José Mujica is

considered less conservative than Vázquez, and stated upon his inauguration that he would not veto any law approved by the Congress. Representatives from *Frente Amplio* introduced a legal abortion bill for the second time in 2010. This bill was designed to both decriminalize *and* legalize abortion within the first 12 weeks of the pregnancy. Because abortion is a crime according to the criminal code, an amendment of the criminal code would necessarily have to be approved in order to fully decriminalize abortion. *Frente Amplio* had the majority (50/99) in the House of Representatives and in the Senate (16/30). The Senate approved the bill first, and then it was sent to the House of Representatives to be treated. However, one deputy from *Frente Amplio* announced that he would not support the law. *Frente Amplio* was now depending on support from other political representatives to get the bill approved. *Partido Colorado* and *Partido Nacional* did not support the bill. However, the two representatives from *Partido Independiente* could determine the outcome. Iván Posada, who had introduced an abortion bill in 2002, got involved in the legislative process: “From then on, a possibility for an exchange opens up. And what I put as a condition is that we take the project which I had presented in 2002 as a starting point. This project had a different vision than the one that had just been approved in the Senate” (Posada 2014 [interview]).

Posada’s intention did not include an amendment of the criminal code; however, he proposed to make a *legal exception*. The legal exception requires women to follow a specific procedure which involves mandatory counselling and a reflection period of five days before the final decision is made (Posada 2014 [interview]). The procedure starts with a medical consultation within the first 12 weeks of gestation to a public or a private entity where an interdisciplinary team is made available for consultation. The interdisciplinary team includes a gynecologist, psychologist, and social workers. The idea is that this arena will serve as a psychological support for the woman, inform her about her choices, and enabling her to make a deliberate decision. After the meeting with this interdisciplinary team there is an obligatory reflection period for five days, after which, if the woman decides to have an abortion, this procedure continues (Posada 2014 [interview]).

The use of correct terms considering whether abortion is actually decriminalized can be somewhat confusing. In the sense that the criminal code is not applied when the required procedure is being followed, abortion is decriminalized. It is also legalized, in the sense that it is a health service provided by the public health system. However, critics of the law hold that it is an ambivalent situation and that one cannot say that “in Uruguay abortion it is not a crime anymore, because if a woman do a clandestine abortion it is still a crime and even though it is

rare, women risk prosecution for this crime” (Abracinskas 2014 [interview]). Further, foreign women who have lived in the country less than one year cannot access the service, and women below the age of 18 who do not have the support from the family need the approval of a judge. Hence, many use clandestine abortion as a last resort (Abracinskas 2014 [interview]).

The representatives of *Frente Amplio* accepted to try Posada’s bill in the Congress. A female representative from *Frente Amplio* explains why they accepted a bill that was more restrictive than the one they had introduced: “To us it was important because we solved a problem of sexual and reproductive health. It is to say, to us it was a step further, it wasn’t what we had thought, but it was a progress” (Lauraga 2014 [interview]). When the project arrived at the House of Representatives, a special committee was created to treat the bill. The original bill that the *Frente Amplio* had introduced was rejected and then replaced by Posada’s project (Posada 2014 [interview]). According to a representative from *Partido Colorado*, also member of the committee, the decision to create a special committee instead of treating the bill in the regular Health Committee was a strategic manoeuvre by *Frente Amplio* in order to guarantee a majority vote, because in the Health Committee representatives from *Frente Amplio* were in minority (Fitzgerald 2014 [interview]). Moreover, since the bill was treated in a special committee, there was a shorter deadline in comparison to the permanent committees (Fitzgerald 2014 [interview]). The bill got a majority vote in the committee and was approved in the House of Representatives and the Senate in December 2012. Deputy Michelini (*Frente Amplio*) made two remarks to this outcome: First, it was crucial that the President did not veto the law this time. Second, the structural circumstances were favourable at that time considering that an increase of the economic and social level in Uruguay allowed legislators to prioritize differently than before (Michelini 2014 [interview]).

The situation that occurred in the Uruguayan Congress demonstrates the implications of micro level inquiry in order to capture aspects of the legislative processes, in this case, the impact of political bargaining. We will now continue with further elaboration on the role of civil society and social movements in this context.

5.2.2 Social Movements: Mujeres y Salud en Uruguay

One organization which have been central to the promotion of abortion rights in Uruguay is *Mujeres y Salud en Uruguay* (MYSU). MYSU was founded in 1997 and is a non-governmental organization that works with the promotion and defence of sexual and

reproductive rights. MYSU is today a coalition made up of different persons from various organizations with a significant linkage to issues on rights and health (Abracinskas 2014 [interview]). Abortion is a topic which has concerned feminists in Uruguay continuously since the transition to democracy in Uruguay in 1985. However, the work of MYSU became increasingly important from the year 2002 for two reasons. First, Uruguay experienced a severe economic crisis at that time, and one of the multiple consequences was a deterioration of the clandestine abortion market which led to an increase in maternal mortality. Second, the government at that time and the Catholic Church made a series of political agreements in order to prevent the legalization of abortion in Uruguay. When this became publicly known it created a huge public debate about the influence of the religious institutions in political decisions in the secular state of Uruguay. The implication of these events was a reinforcement of the public and the parliamentary debate about abortion rights: “In this period we achieved to formulate a bill to decriminalize abortion which later failed in the Senate, because what prevailed was the political agreement, and because the vice president threatened to veto, the legislators voted against it” (Abracinskas 2014 [interview]).

When *Frente Amplio* won the presidential elections and the majority in Congress in 2005, social movement actors thought it would be easier to legalize abortion given that *Frente Amplio* is a political movement that supports social initiatives. Nevertheless, President Vázquez was not in favour of liberalising any abortion law (Abracinskas 2014 [interview]). The President’s veto of a law that recognised all the sexual and reproductive rights as human rights was a huge disappointment for the social movement (Abracinskas 2014 [interview]). At the beginning of the new legislature in 2010, however, the social movement started over again with promoting abortion rights, and in 2012 abortion was legalized with certain conditions. However, MYSU was at first not satisfied with the law:

We were not satisfied because the criminal code was not amended and abortion continues to be a crime in Uruguay. Women are exempted if they realize the abortion within the 12 first weeks, and if they follow a series of administrative proceedings. However, these procedures are questioning the woman’s ethical capacity to make her own decisions” (Abracinskas 2014 [interview]).

Critics of the law have questioned the consequences of the mandatory consultation and the five days reflection period, arguing that the procedure functions as an obstacle for women with few resources. The result is that many women continue to consider illegal abortion as a more convenient solution although the risk of complications is higher. Further, because the legal abortion service is poor in some provinces, women have to travel to Montevideo: “We have met with women who work in factories in the provinces, and to ask for one week off

complicates their situation at work, they are afraid of losing salary as well as the suspicion by colleagues and supervisors” (Abracinkas 2014 [interview]). Because abortion is still considered a crime in the criminal code, the stigmatization continues and many women feel that they are committing an illegal act even when they have a legal abortion. Even though MYSU is critical to the law, they do recognise the progress it represents:

Anyway, I have to say, it is a change, and one has to value what happened in Uruguay because there are countries in much worse situations. We understand that in spite of being a poor law, and in spite of the service having faults, one has to defend what we got and promote the service so that women actually use it when they need it (Abracinkas 2014 [interview]).

Abracinkas also point out that Uruguay has benefitted from the legislation on an international level, giving the country a progressive status.

5.3 Argentina

Studies have demonstrated that female legislators are more active than male legislators in promoting abortion rights in Argentina; in the period 1989 to 2007 women representatives in the Congress introduced 80 % of the legislative initiatives related to legalising abortion and expanding the access to contraception and reproductive rights (Franseschet and Piscopo 2008). Although progress on the promotion of reproductive rights has been incremental when considering legislation on contraception and the *introduction* of bills that expand abortion rights, there has been no progress in terms of legislation on abortion rights (Lopreite 2014:390).

Article 86 in the Argentine Criminal Code establishes that abortion is a crime, but with a few exceptions (Criminal Code Argentina 2014). Abortion is legal if is performed by a certificated medical with the consent of the woman in the following cases

- 1) When there is a risk for the woman’s life or health,
- 2) If the pregnancy is a result of rape, or the woman is mentally diseased

The Criminal Code apply to all the provinces of Argentina. In contrast to other federal states, like for instance Mexico, sub-national states in Argentina do not have jurisdiction to decriminalize or legalize abortion (Lopreite 2014: 390). Local authorities can, however, ensure the implementation of the already existing abortion rights by instructing health authorities to inform health institutions of the legal conditions. In Argentina, the varying

degree of commitment by local governments has resulted in a situation where women's access to legal abortion is depending on which province they live in (Gherardi 2014 [interview]).

We will now continue with a brief review of the most important places where abortion rights have been promoted the recent years in Argentina.

5.3.1 The Legislative Debate in the Congress, 2011

On November 1st 2011 a bill whose content was to legalize abortion within the first trimester of gestation was debated in the Criminal Law Committee in the Chamber of Deputies in the Argentine Congress. This was not the first time a legal abortion bill was submitted in the Congress, but the event was considered historical because it was the first time it came to be formally discussed in a legislative committee. The legislative system in Argentina allows civil actors to introduce bills, with the support from more than one legislator. In 2007 and 2010, the legal abortion bill was introduced by the women's movement *La Campaña por el Derecho al Aborto Legal, Seguro y Gratuito*²³ (*La Campaña*). The bill of 2010, which is included in this analysis, was supported by the signatures of around 50 deputies (Proyecto de Ley 0998-D-2010:2010). The legislative debate of legal abortion in 2011 was by some women's rights activists regarded as an important progress. One activists expressed that "2011 was a year of great impact regarding abortion, both in terms of devastating cases of girls being denied their right to legal abortion, but also in terms of a stronger pressure by the movement in order to legalize abortion" (Anonymous activist 2014 [interview]).

The president of the Criminal Law Committee at that time, Juan Carlos Vega (*Union Cívica Radical*), brought the bill up for discussion. Vega first decided to set the date for the debate one week before the congressional elections. This led to a shred of criticism by the women's movement that feared the timing would cause legislators to abstain from participating due to the fear of losing votes. The women's movement had to make a substantial effort to change the date: "We pressured where we could, we talked to deputies, until one legislator made an advocacy process against Vega, and finally we managed together to make him change the date to after the elections" (Anonymous activist 2014). The legislative debate was a result of a process that started with the introduction of the bill in 2010, and which included meetings with, amongst others, representatives from Human Rights Watch and the Inter-American Commission for Human Rights (Lavaca 2011). According to Vega, these meetings "tried to

²³ The National Campaign for the Right to Legal, Safe, and Free Abortion

guarantee a maximum of political, religious and ideological plurality for the simple reason that abortion is an issue that is crossed by religious questions and poverty” (Lavaca 2011²⁴).

The Criminal Law Committee has permanent members, but the hearing was open. Several politicians from other parties and actors from civil society were present. The heated debate and protests from both proponents and anti-abortion activist during the debate provoked Vega to ask people to calm down several times during the debate (Lavaca 2011). With regards to the permanent members, only one member from the ruling party *Frente Para la Victoria*²⁵ (FPV) was present (Página12 2011). The fact that many members from the FPV chose to abstain from the debate was interpreted as 1) a lack of political will and 2) a sign of the influence that the President exert in legislative matters. President Kirchner had a leading role in promoting and leading the legislative agenda with respect to other sensitive issues, like the approval of the same-sex marriage law (2010) and the gender identity law (2012), which was crucial for the legislative outcome (Lopreite 2014:401). With regards to legal abortion, however, President Kirchner has expressed an opposing view (La Nación 2011a). The only representative from FPV who was present at the legislative debate made the following comment about this: “It is true that this debate is not on the agenda of the executive. We have a strong executive, when it wants to put an issue on the agenda it sends its own project, and this is not the case here” (Lavaca 2011).

In order for the bill to advance to the next committee, it was dependent on a majority vote by the *permanent members* of the commission, and for the vote to take place it had to be a *quorum*. This meant that a certain number of the permanent members had to be present for the vote to be valid. At first, Vega publicly announced that due to the 11 members present, six votes in favour of the bill would be sufficient for the bill to be passed on to the next committee. According to this information the bill got the necessary approval, which was confirmed by Vega (Página12 2011). The following day, however, it turned out that various “formal mistakes” put an end to the process. Vega reversed his statement from the previous day, claiming that there should have been 15 members present in order for the vote to be valid (La Nación 2011b). Furthermore, it turned out that a legislator who was present at the debate, though not a permanent member of the committee, had voted, something which also implicated a formal mistake. How these circumstances could occur is a question many asked themselves afterwards. Nevertheless, the debate has not been raised at the same legislative

²⁴ Transcription of the meeting in the Criminal Law Committee

²⁵ Front for Victory (Peronist electoral alliance, formally part of Partido Justicialista).

level again. An ex - legislator claims that President Kirchner has deliberately prevented the debate: “it was not discussed again because Christina Kirchner indicated that it was not to be discussed again” (Maffia 2014 [interview]).

The following year the Supreme Court made an important ruling with regard to the interpretation of Article 86 which contributed to the public awareness and debate of abortion rights in Argentina.

5.3.2 The Ruling of the Supreme Court, 2012

The 13th of March 2012 the Supreme Court made a ruling about legal abortion in the case *F., A.L* (Centro de Información Judicial 2012). The Court affirmed the ruling of a lower court in the province of Chubut, which two years previously had approved a legal abortion for a 15 year old victim of rape. First, the ruling by the Supreme Court was important because it clarified a formulation in Article 86 on legal abortion in cases of rape. The much disputed formulation of the law has allowed for judges to interpret that legal abortion applies only in those cases where the rape victim is mentally disabled. In this respect, the Supreme Court declared that *abortion is legal for all rape victims*. Second, the Court stated that doctors do not have the right to require any judicial authorization in order to realize the abortion. It is sufficient with a written declaration by the victim or the legal representatives of the victim that the pregnancy is a result of rape. Third, the Court announced that judges are obliged to guarantee rights and should therefore not intervene and convert themselves into an obstacle of exercising those rights (Centro de Información Judicial 2012). The Court ruling was unanimous.

5.3.3 The Legislature of the City of Buenos Aires Approves Legal Abortion Bill, 2012

The 29th of September 2012, the city legislature of Buenos Aires approved a law considering the abortions which are legal due to the stipulations of Article 86 in the Criminal Code. Although the provincial governments of Argentina do not have jurisdictions to amend the Criminal Code, they can instruct local health institutions in order to guarantee the right to abortion in legal cases (Gherardi 2014 [interview]). One legislator who was central in this process tells that

What we did here in the legislature was to present declarations in favour of legal, secure and free abortion. We declared that the legislature would welcome an advancement of the protocol of the legal

abortion in the various provinces, and we proposed a protocol of the legal abortion for the city of Buenos Aires which we proposed in this same legislature” (Rachid 2014 [Interview]).

The law was approved by the city legislature of Buenos Aires and stated that abortion is legal if 1) it affects the health or life of the pregnant women and 2) in cases of rape. The protocol included instructions of how to act in cases of legal abortions. The aim was to interpret the health question in accordance to interpretation of the World Health Organization, a perspective which includes the complete wellbeing of women; physical, psychical and social (Rachid 2014 [interview]). This interpretation is so ample that it includes all forms of abortion: “In this way, all abortions would be considered legal abortions because every time a woman aborts it is because there is a health risk. For instance, that a pregnancy affects the social health. This interpretation would make Buenos Aires a vanguard compared to other provinces”(La Nación 2013a; Rachid 2014 [interview]). Further, the law establishes that both public and private hospitals should realize abortions without any other requisites than the consent of the woman, and within a timeframe of five days (La Nación 2013a). The legal abortion bill was vetoed one month later by the conservative governor Mauricio Macri. In order to underline his opinion that the new law was superfluous, Macri informed the public that a woman would have a legal abortion at a given hospital in Buenos Aires the following week. The public announcement of confidential information caused an outrage by the women’s movement, and the anti-abortion movement took advantage of the opportunity to protest against abortion. The initiator of the legal abortion bill, Maria Rachid, appealed together with a handful of NGO’s to a lower court in order to annul the veto. In July 2013 a lower court in Buenos Aires declared Macri’s veto unconstitutional and ordered the law to be implemented (La Nación 2013a). There has not, however, been any progress in this respect.

5.3.4 Social Movements: La Campaña Nacional por el Aborto Legal, Seguro y Gratuito

In Argentina, social movements and civil organizations have been active and played a protagonist role in promoting legal abortion for years. The national campaign movement *La Campaña Nacional por el Aborto Legal, Seguro y Gratuito* (La Campaña) is probably the most active and influential movement in Argentina today. The movement was founded as an initiative by feminist and women’s organizations and is a broad alliance consisting of around 305 organizations and individuals whose work is related to human rights, academic and scientific environments, unions, and student organizations (La Campaña 2014). The movement was founded the 28 of May 2005 with the slogan: “Sexual education to decide,

contraceptives to not abort and legal abortion not to die” (La Campaña 2014). *La Campaña* declares on its webpage that their main objectives are 1) to implement the debate of the necessity to decriminalize and legalize abortion in Argentina in the society and in the state 2) contribute to the inclusion of more women and organizations in this process and claim-making, 3) achieve the approval of a legal norm that decriminalize and legalize abortion in Argentina (La Campaña 2014).

La Campaña has introduced several legal abortion bills in the Congress. When the discussion of the bill of 2010 was accepted by the Criminal Law Committee in 2011, the movement had worked extensively with lobbying the Congress (Anonymous activist 2014 [interview]). One of the motivations was a series of incidents where several rape victims were refused their legal right to abortion. Further, because the same-sex marriage law had been approved the previous year, the legal abortion movement regarded the timing of an increased lobbyism as strategically important with greater chances of achievements. Activists observed that legislators seemed less reluctant to speak in favour of legal abortion, and that anti-abortion attitudes were perceived “politically incorrect” by many (Anonymous activist 2014 [interview]). Despite these changes, activists regard the issue as complicated: “legal abortion is the number one demand of all the women’s movements, but still we cannot achieve to solve this issue” (Anonymous activist 2014 [interview]). On the one hand, national legislators fear to lose political support, in particular in the conservative provinces, - a factor strong enough to influence their will to act in favour of abortion rights, even if they are personally positive to do so (Gherardi 2014 [interview]). On the other hand, anti-abortion movements are often willing to go a long way to manifest their opinions and demonstrate their capacity and will to act against abortion rights. The ability of civil actors to succeed is not always limited to their own strength and strategies; it is also dependent on the strength of their counterparts (Díez 2013). An example is the situation which occurred after Macri made the announcement a woman, victim of human trafficking, would have a legal abortion on a local hospital. The anti-abortion movement mobilized a protest and appealed to a lower court to prevent the abortion. The judge supported their claim, and the abortion was never performed (La Nación 2012). This example demonstrates the relevance of also considering the strength of counter movements when assessing the influence of social movements in their promotion of rights, especially in controversial issues like abortion. The impact of mobilization by counter movements on the opportunity structures that *La Campaña* for instance got, may provide as

part of an explanation of why, despite massive support and mobilization, abortion rights are hard to translate into a policy outcome.

Chapter 6

6 Process: *Why* Legalize Abortion, *Who* Acts and *How* is Substantive Representation Expressed?

6.1 Why is Legalization of Abortion Attempted?

Latin American women's organizations have fought for the right to safe and legal abortion for decades (Human Rights Watch 2005). Feminists have promoted abortion rights by framing arguments in several ways. While rights and the principle of personal choice and individual liberty dominated feminist discourse in the developed world, abortion could be framed as a health issue in the developing world, due to the high rates of mortalities associated with abortion (Htun 2003:42). In the following sections we explore the arguments in favor of legal abortion as they have been framed by actors in parliament and social movements in Argentina and Uruguay. Important observations in this regard are both the reasoning behind the arguments, and how actors formulate their arguments in order to get support for the issue. The data is based on the document of the legal abortion bill in Argentina (Proyecto de Ley 0998-D-2010:2010) and transcriptions from the legislative hearing in the special committee in Uruguay (Appendix III). I have sorted the arguments into four categories; 1) Human Rights Arguments, 2) Social justice arguments, 3) International Law and commitments arguments, and finally 4) Public opinion arguments.

6.1.1 Human Rights Arguments

Authoritative interpretations of international law recognize that abortion is vitally important to women's exercise of their human rights (Human Rights Watch 2005). The legal abortion bill introduced by members of *La Campaña* in the Argentine Congress in 2010 state that "The organizations of this alliance consider the sexual and reproductive rights to be human rights, which should be recognized as fundamental rights for everyone" (Proyecto de Ley 0998-D-2010:2010). *La Campaña* suggests decriminalizing and legalizing abortion so that "women who decide to interrupt a pregnancy are given safe and free attention in public hospitals in the whole country". Further, they refer to democratic principles: "Legalizing abortion presumes an expansion of democracy; to guarantee these rights implicates to listen to those affected by a patriarchal society which limits, violates and subordinates 52 % of the population. One of

the characteristics that define a democratic state is the respect for human rights, in which sexual and reproductive rights form part of” (Proyecto de Ley 0998-D-2010:2010). In **Table 6.1** I have listed some of the arguments that were presented during the legislative hearing in Uruguay, and in the legal abortion bill in Argentina.

Table 6.1: Human rights arguments

Argentina	Uruguay
<p>-“The right to decide about your own body is a personal right”</p> <p>-“The right to decide is not limited to the right to interrupt a pregnancy; it also includes the possibility to decide about motherhood”</p> <p>-“La Campaña claim that the right to health, the access to medical attention, and the achievement of the highest possible level of health, established by the human rights, is not guaranteed in Argentina given that the current state of the regulation of abortion is the direct cause why many women gets ill”.</p> <p>- “the right to privacy protects people from the influence of the state in their private lives”.</p> <p>-The right to be free from interferences in reproductive decisions and the right to be free from all kinds of coercion and violence which affects the sexual and reproductive life of the woman.</p> <p>-The right to freedom of thought, conscience and religion</p>	<p>– “Report from UN supports decriminalization of abortion. Violation of women’s health rights reinforces the inequality between men and women. Health is a human right” (La Coordinadora de Aborto Legal²⁶).</p> <p>- “the proposed law does not suspend the possibility of prosecution, because abortion would still be considered a crime according to the criminal code”. -“The Childrens’ rights convention recommends that abortion is not being criminalized, as do CEDAW” (Cladem Uruguay²⁷)</p> <p>- “Maternity has to be a right and not an obligation. The woman has a right to decide the number of children, the intervals between them, and decide if she in certain determined circumstances in her life wants to be or not a mother. Why does she have to go through an interdisciplinary team?” (Alicia Castro, Instituto de Filosofia del Derecho de la Pudelar²⁸)</p> <p>- “We think legal abortion will be a great progress in public health at a national level – in particular for women’s health, based on the defense and promotion of sexual and reproductive rights as human rights”. (Subsecretario del salud publica²⁹)</p>

Sources: Argentina: Proyecto de Ley 0998-D-2010:2010; Uruguay: Appendix III

Human rights and the *right to health* form the basis of the justification. The rights to health and health care are recognized in a number of international instruments (Human Rights Watch

²⁶ Appendix III: Nº 1218 de 2012

²⁷ Appendix III: Nº 1219 de 2012

²⁸ Appendix III: Nº 1231 de 2012

²⁹ Appendix III: Nº 1231 de 2012

2005). *La Campaña* drew on the information about the current situation and how the decriminalized abortion affects women to support their arguments:

The criminalization of abortion in our country has not saved any lives. The law sanctions when the abortion has already been realized, it is not preventive, it does not avoid that abortions are being realized, neither that women die because of the use of clandestine intervention. On the contrary, the abortions are being realized at an increasingly early age and deteriorating conditions (Proyecto de Ley 0998-D-2010:2010).

Proponents of legal abortion in Uruguay built their argumentation on similar grounds and referred to the consequences that illegal abortions have in worst case scenarios: “It is a question of human rights and democratic advancement. We cannot accept more deaths because of illegal and unsafe abortions when the priority of this government is equal conditions through public policy”³⁰ According to Human Rights Watch, “the right of women to decide on the number and spacing of children without discrimination can only be fully implemented where women have access to all safe, effective means of controlling their family size, including abortion” (2005:19). MYSU argued that the desired motherhood should be understood as a right and a responsibility. The organization emphasized that imposing motherhood is to dehumanize it; it has impacts which can give room to abuses and abandonments of children.

Further, they expressed concern for the law regarding the required procedure and whether it will present a barrier to access the service. In terms of any continuous abortion ban and how this influence women’s current health situation in Uruguay, MYSU highlighted the psychological impacts that are produced because of the continuous criminalization which still affects women in difficult situations³¹. Table 6.1 summarizes some of the central arguments related to human rights as they were framed by legal abortion proponents in Argentina and Uruguay. In both cases, **women’s rights** and **health rights** were essential to the framing.

6.1.2 Social Justice Arguments

Abortion is a medical procedure that only women need, and the CEDAW³² Committee has implied that “the denial of medical procedures only women need is a form of discrimination against women” (Human Rights Watch 2005:13).

³⁰ Appendix III: Nº 1218 de 2012

³¹ Appendix III: Nº 1219 de 2012

³² The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Table 6.2 Social Justice Arguments

Argentina	Uruguay
<p>-“The Committee of Economic, Social and Cultural rights signals that the right to health involves liberties and rights. Amongst the liberties is the right to control your health and body, including sexual and reproductive liberty. Amongst the rights is the right to a system of health protection which will give people equal opportunity to enjoy the highest attainable standard of health”</p> <p>-“The right to non-discrimination and equality”</p> <p>-“Legalizing abortion based on social justice is to recognize that in the Latin-American context, due to poverty and social inequality, it is the poor women who suffer or die because of clandestine abortions”</p>	<p>- “Equality of opportunities – that those with money can do a safe abortion, while the working class women can’t and have to risk their lives” (Departamento de Género, Equidad y Diversidad (PIT-CNT)³³</p> <p>-“We believe that decriminalization is necessary, but not sufficient; sufficient would be the legalization, because in that sense the State could guarantee the rights for everyone”. “We don’t want our female citizens to buy guarantees in order to survive” “it doesn’t matter why the woman is realizing this intervention, rather that when she does, she is guaranteed, as a citizen of our country, which she will not pay with her life” (Federación de Estudiantes Universitarios del Uruguay³⁴).</p> <p>-“it is clear that this is about social justice, because it is the women with less economical resources who will see their rights violated” (Comisión Nacional de Seguimiento, Mujeres en Democracia, Equidad y Ciudadanía³⁵)</p>

Sources: Argentina: Proyecto de Ley 0998-D-2010:2010; Uruguay: Appendix III

We see from the arguments listed in **Table 6.2** that proponents in both countries draw on arguments based on the current situation which is characterized by social injustice; poor women are the most vulnerable group given that middle-class women have the opportunity to pay for safe abortions. The **rights to non-discrimination and equality** are set forth in a number of international human rights instruments (Human Rights Watch 2005). The arguments illustrate that similar challenges related to illegal abortion are of central concern in Argentina and Uruguay.

6.1.3 International Law and Commitments

In the justification for the introduction of the legal abortion bill in Argentina, arguments related to Argentina’s commitment to international conventions and treaties are particularly emphasized (Proyecto de Ley 0998-D-2010:2010). Although The Convention on the

³³ Appendix III: Nº 1218 de 2012

³⁴ Appendix III: Nº 1219 de 2012

³⁵ Appendix III: Nº 1219 de 2012

Elimination of All Forms of Discrimination against Women (CEDAW) was also referred to by Uruguayan proponents, Argentinean proponents elaborated more extensively on Argentina's leading position as a proponent for human rights in the international community, and reminded legislators to be consistent also with regards to women's rights:

Women's right to abortion – legal, safe and free – is founded in the International Human Rights Law. Argentina, as a signatory country of treaties and human rights conventions is obligated to guarantee women the following rights: life, the maximum level possible of physical and mental health, equality and non-discrimination, privacy and reproductive autonomy, among others (Proyecto de Ley 0998-D-2010:2010).

Further, *La Campaña* referred to a statement by Human Rights Watch which supports legal abortion and relates it to Argentina's "international obligations":

In order for Argentina to comply with their international obligations in issues of human rights, it requires an urgent reform that guarantees the access for women to legal and safe abortion, and the grant of access to contraception and adequate information. For every woman, it is a question of equality. For some women, it is a question of life or death (Proyecto de Ley 0998-D-2010:2010).

The variation in access to safe abortion on an *international level* is framed as an issue of discrimination: "If the Human Rights are universal and belongs to all citizens, then condemning somebody for the crime of abortion, while it is a right for others, represents discrimination on an international level" (Proyecto de Ley 0998-D-2010:2010). Regional commitments are also highlighted; At the *Regional Conference about Women in Lima* Argentina adopted the Lima Consensus, and committed to guarantee the protection of women's human rights, including their sexual and reproductive rights, and to formulate a program directed towards protecting the health and women's sexual and reproductive rights (Proyecto de Ley 0998-D-2010:2010).

Despite solid argumentation from *La Campaña*, with emphasis on Argentina's status as an important human rights defender in the international community, political leaders have failed to comply with the demands.

6.1.4 Public Opinion

While Argentine proponents emphasized the importance of international commitment in their bill introduction, two separate organizations used public opinion in Uruguay as an argument in favour of legalization in the hearing. This is an interesting element considering the concept of *responsiveness* to the preferences of the constituencies. These arguments were first and foremost directed towards the *decriminalization* of abortion. One of the delegations claimed

that because 51 % of the Uruguayan public is in favour of decriminalizing abortion, the elected representatives should take this into account when assessing the content of the law³⁶. Further, the Organización Social Pro Derechos stated that

We are neither defenders nor promoters of abortion, but our opinion is that all women have a right to decide about her life without committing a crime. We hope that the opinion of the majority of the Uruguayans will be represented by the parliament³⁷.

These arguments thus refer to the concept of substantive representation in the way that the represented expect their representatives to act in accordance with the preferences of the electorate. In the following sections we consider the next element of the process-oriented aspect, namely “who acts”. I shall here analyse the importance of the gender aspect, and identify one critical actor in each case who were central for advancing the debate, and in the Uruguayan case, also central to the policy outcome on legal abortion.

6.2 Who are the Critical Actors?

Identifying critical actors requires attention to a wide range of potential players, including male and female legislators, ministers, party members, bureaucrats, and members of civil society groups (Celis et al 2008:104). In the Uruguayan case, the commitment by *Frente Amplio* to promote legal abortion and initiate the discussion in the Congress was important: “Frente Amplio took the initiative, in spite of, and knowing that there would be problems with the implementation of the law” (Michelinini 2014 [interview]). In Argentina, *La Campaña*, together with a few legislators played an important part in initiating the legislative process in the Argentine Congress in 2011 (Rodriguez 2014 [interview]). Two individuals – one in each case - appear to have influenced the progress of the legislative processes, and both are, ironically, male legislators. While Juan Carlos Vega in Argentina had a policy gate-keeping role as a chair of the Criminal Law Committee, Iván Posada in Uruguay was a key actor in the political bargaining that evolved around the wording of the law.

6.2.1 Policy-Making: Political Bargain and Symbolic Acts

The president of the Criminal Law Committee in the Argentine Congress, Juan Carlos Vega supported the discussion of the bill. That Vega supported the discussion was crucial for the advancement of the bill to the committee. Nevertheless Vega’s support of the debate, he did

³⁶ Appendix III: Nº 1219 de 2012

³⁷ (ibid.)

not personally support the bill: “In a spurious way, in order to be a protagonist, but without any compromise for legal abortion, the debate was encouraged by the president of the Criminal Law Committee” (Rodriguez 2014 [interview]). Vega did not sign the bill or vote in favour of the legal abortion bill introduced by la Campaña; instead he introduced a more moderate bill which only he signed. Respondents were suspicious of Vega’s agenda:

We knew his opinion and that he was looking for a position in an international organization, because within his party he could not renew his mandate. He therefore wanted to leave for another position, and that’s why the abortion issue served him, because it was a progressive card he could use for negotiation (Anonymous activist 2014 [interview]).

Of course, we should be careful to conclude that Vega’s incentive for his action was related to his own career opportunities, but we do know that he did not formally support the bill. In any case, the example demonstrates that actors do sometimes behave in ways which may wrongfully be interpreted as acts in favour of women, while their personal motivation for their actions has other explanations. It follows that it is debatable whether Vega should be considered a critical actor if he did not have the intention to promote women’s rights. Nevertheless, in this particular case, Vega was crucial for allowing the first legislative debate on abortion rights in Argentina and I consider it to be valuable for the analysis as a whole to include his actions because it adds a dimension to the subject; politics is both a strategic and unpredictable game, subjected to the preferences and power positions of various actors. If we ignore these micro processes, we might miss out on some important perspectives.

In the Uruguayan legislative process, Iván Posada’s intervention was crucial for the advancement and the outcome of the abortion bill, although he is also responsible for the restricted version of the bill: “The law was restricted by Posada, but without him there would not have been any law” (Micheleni 2014 [interview]). If Posada had not offered his vote, *Frente Amplio* would not have had the majority to legislate. However, he did not offer his vote without getting something in return; he wanted his own project to be approved. Whether this was due to Posada’s own conviction of what would be the best solution or motivated by the political merit of getting his project approved is difficult to say. Posada’s own explanation however relates to women’s rights: “There was an ambivalent situation between the right to be born and the woman’s right, thus the attempt was to generate an instance (body) of counseling through this interdisciplinary team” (Posada 2014 [interview]). Further, Posada claims that the law in the last instance gives priority to the right of the woman, but before the decision is made, the right of the unborn has been considered through information about the possibilities and alternatives that exists for solitary mothers with regards to economic support

or adoption: “This is to say, everything that is complementary information so that the definitive decision is made as a conscious and responsible decision” (Posada 2014 [interview]). Without Posada’s will to act, the legislative process would most likely not have turned into legislation.

The above examples represent fractions of the legislative processes in Argentina and Uruguay. However, they demonstrate the complexity of political activity and the intricate web that unfolds when investigating policy processes at a micro-level. Critical actors may have motivations beyond our prior assumptions, and it is thus important as a researcher to keep a critical position when investigating legislative behavior.

6.2.2 Promoting Legal Abortion: The Implications of Gender

Studies have demonstrated that after the Argentine Senate reached the 30 % peak of women representatives, themes that had not been discussed before started to be debated. Nevertheless, agenda change did not necessarily mean policy change (Franseschet and Piscopo 2008:409). A representative from the left-wing party *Partido Obrero*³⁸ in Argentina claims that “Without doubt the legal abortion is a banner which the women’s movement holds. I don’t think that you’ll find more concern among the women than the men in the parliament” (Vanina Biasi 2014 [interview]). In Argentina, women tend to have a protagonist role in the issue of sexual and reproductive rights, both as defenders of legal abortion and as opponents of legal abortion (Rodriguez 2014 [interview]). A report from Uruguay finds that Uruguay is the country in the region where abortion is most justified, and *women* justify abortion to a greater extent than *men* (Rossi and Triunfo 2010). Indeed, a legislator from the Uruguayan Congress claimed that “the fiercest opponents of legal abortion the Special Committee received were men” (Laurnaga 2014 [interview]).

In the city legislature of Buenos Aires the abortion law was supported by a significant number of men in the voting procedure. A brief look at the legislators who signed in support for the legal abortion bill in the Argentine Congress in 2011 tells us that out of a total number of 39 supporters, 21 were women representatives, and 18 were male representatives (Proyecto de Ley 0998-D-2010:2010). Further, the members of the Criminal Law Committee who voted in favour of the bill (six in total) constituted three men and three women (Pagina12 2011). Still, these numbers tell us little about the *level of commitment* among the male legislators and how

³⁸ Worker’s party

and whether they partake in actively promote abortion rights. A former argentine legislator shared her opinion about gender:

Personally, I'm against essentialist and biologist visions in terms of feminist or gender perspectives. (...) Men appear to be more hidden in this controversy [legal abortion], however, they may be active on a secondary level, or in the shadows, and with more power than the women who are fronting the debate" (Rodriguez 2014 [interview]).

An increase in women's descriptive representation may affect the political agenda, but it does not seem to be enough to make actual change: "In principle, an evaluation of the increase of women in the parliaments in Latin America indicates an increase in the treatment of some issues of sexual and reproductive rights. It seems to be that it is not a sufficient condition, but it may be a necessary condition" (Rodriguez 2014 [interview]). The expectation that women representatives will take a lead and achieve progress is not convincing, according to Biasi, who claims that the assumed positive relationship between women's descriptive representation and the increased focus on women's rights is misunderstood:

There are sectors which identify the rise of women in power with the rise of women's rights, but it has nothing to do with each other. Thus, when we see Christina Kirchner governing this country, at least from the women's perspective in which we take part, it doesn't look like any advancement to us. It is a smokescreen. The fight for women's rights has to be accompanied with a consistent fight for a more profound social change. The legal abortion in Argentina and Latin America is a right we can only achieve by social change, not with changing the head of some deputy in order to change his or her opinion about abortion (Biasi 2014 [interview]).

We see here an illustrative example of President Kirchner as an actor which "stands for" women on the grounds of her being a woman, however, she does not "act for women". Also in Uruguay, respondents were reluctant to put too much emphasis on the women's representatives' role in the legalization of abortion:

Not in Uruguay, because the female legislators only constitute 12 %, if we had only opted for support by the women we would never have got any favourable result. (...) it's true that the majority of the female MPs were the most involved. But we had a lot of men on our side, if not it would have been impossible" (Abracinkas 2014 [interview]).

Hence, women representatives were more active than their male colleagues during the *process*, but as the low amount of women in the Uruguayan Congress suggests, the votes of male representatives were crucial for the outcome. Based on the above information I remark that women representatives are in general more involved in substantive representation of women as process but this is not sufficient for the achievement of policy change.

6.3 How is Substantive Representation of Women Expressed?

How do legislators act in order to represent and promote legal abortion? According to one respondent, one has to differentiate between actions that demonstrate symbolic compromise, and activities that demonstrate real commitment: “The most compromised attitude is not to sign a bill and express publicly one’s compromise in favour of abortion, but to participate in demonstrations, committees, arrange activities together with organizations and have a cross-party dialogue between the deputies” (Rodríguez 2014 [interview]). Some of the activities Argentinean legislators have promoted are inviting to public debates, arranging panel discussions, inviting experts— even if the bill is not being officially discussed in any committee. “These activities happened very frequently with the abortion debate” (Maffía 2014 [interview]). In the Argentine Congress there is an initial period of every committee meeting where anyone from the public can come and talk about the topic that concerns them. Local legislators also have contact with national legislators regarding the abortion law. They organize meetings and demonstrations, both as citizens and as activists (Rachid 2014 [interview]).

Further, it is common that groups or social organizations meet with deputies from different party blocks to inform them of their needs. This type of informal lobby, which is not regulated in Argentina, is often well received by the legislators because of the public policy issues they raise and the technical information that they often provide (Diana Maffía 2014 [interview]). *Partido Obrero* is one of the few political parties which has included the unconditional defence of legal, safe and free abortion in their party program, where it is framed as a women’s right (Partido Obrero 2014). The party has a women’s organization which “works and campaigns in favour of legalization of abortion and against all the state policies which curtails this right” (Biasi 2014 [interview]). Some of the activities through which they express their support for abortion rights are in debates with other organizations, like unions and student organizations. There are three deputies from *Partido Obrero* in the Congress who got elected in 2013, and who will presumably represent this issue:

Obviously we will be the most consequent defenders of this right in the national congress, and that is something new, because until now no political power has defended it, except on an individual level by some deputies from different parties” (Biasi 2014 [interview]).

In Uruguay representatives from *Frente Amplio* introduced the abortion bill in the two recent legislatures (Lauraga 2014 [interview], Fitzgerald 2014 [interview]). Hence, the legislative activities have been manifested in terms of repeated bill introductions by political

representatives, which have led to several votes in both chambers of the Congress the last 12 years. Although significant efforts are made in Argentina to achieve parliamentary status for the bill, these have not led to advancement at the same level as in Uruguay.

6.3.1 Connections between the Women's Movement and Female Legislators

According to Franseschet and Piscopo (2008:408), the quota campaign in the early 1990s in Argentina contributed to a strengthening of the relationship between the women's movement and the female legislators. This connection between the legislators and the social movements has been central to the promotion of the legislative discussion of abortion rights in Argentina (Rodriguez 2014 [interview]). One ex-legislator of the legislature of Buenos Aires confirms this relationship: "Yes, there are connections with social movements. I believe that many laws have been approved due to these connections. The same-sex marriage law, the gender identity law, would not have been achieved, because the legislators didn't have any idea about these topics" (Maffía 2014 [interview]). Activities to promote abortion rights in Argentina have thus been a product of collective efforts by actors from the women's movements together with a few committed legislators:

In Uruguay, respondents from the legislature are more reluctant to give credit to the women's movement and their influence in the legislative debate and the outcome of the bill (Lauraga 2014 [interview]). According to a legislator from *Frente Amplio*, "the women's movement was important, but the impact of the movement was not decisive" (Michellini 2014 [interview]). However, actors in the women's movement claimed they had been collaborating with legislators: "Yes, our work was done through the identification of legislators in the parliament. We always identify which one of them is our allies" (Abracinskas 2014 [interview]). In the committee where the bill was treated, legislators received organizations and individuals that were both against decriminalization and in favour of the law: "There were fundamentalist sectors in favour of the right to be born, and on the other hand there were women's movements which were completely in favour of legalization, this created a situation where the project had critics from both sides" (Posada 2014 [interview]). Fitzgerald says that "the meetings with the social movements took place in the committee, after that there were debates about the issue, but where people had distinct opinions. It was nothing partisan, working with any organization, on neither side" (Fitzgerald 2014 [interview]). Hence, it seems that the connection between the women's movement in Argentina and the national

legislators is stronger, and further that it is more common that these two “actors” collaborate in the issue of promoting legal abortion.

6.3.2 Activities Promoted by Social Movements

The involvement by social movements seems to be an important difference between the legislative process in Argentina and Uruguay. In Argentina, actors from civil society can introduce bills, if at least one legislator supports the project. Citizens can also introduce laws in cooperation with legislators. Social movements in Argentina have been more directly involved in the legislative process. To what extent social movements can involve in the legislative process by introducing bills depends largely on the political system; a factor which in turn determines the opportunity structures that social actors got.

However, the activities social movements promote are often directed towards various targets. A large amount of their work consists of spreading information and raising public consciousness about abortion rights. One Argentine activist tells: “Our work goes in various directions, aimed at monitoring public policies like the access to health. One area is dedicated to the diffusion of catholic arguments in favour of legal abortion aimed at the parliament and its representatives” (Anonymous activist 2014 [interview]). In countries that permit abortion on narrow legal grounds, information about legal services is often unavailable (Finer and Fine 2013). Various respondents expressed concern for the enormous work that needs to be done when it comes to changing society’s perception and knowledge about legal abortion. The health sector and medical personnel have been particular reluctant towards legal abortion in Argentina (Schvartzman 2014 [interview]). As one respondent explains: “ (...) in the health sector there is a problem, because there is a lot of resistance towards women’s rights, therefore we teach about gender issues in the health sector (Anonymous activist 2014 [interview]). The strategic work of *La Campaña* is not only directed towards the political level, but also at the social level where it is expressed in academic environments and communities:

To me the movements achieved to position the topic of abortion along with more general demands, for example framing abortion as women’s human rights. It achieved to gather other sectors of women’s movements, *la Campaña* was supported by universities, unions, and other human rights organizations” (Anonymous activist 2014 [interview])

Women's rights activists in Argentina have arranged an annual march the 28 of September which is the international day of sexual and reproductive rights. On these occasions the national legislators in favour of legal abortion participate (Maffía 2014 [interview]).

MYSU is operating within some of the same areas as *La Campaña* in Argentina; including monitoring public policies:

We are monitoring public policies, trying to see which juridical commitments within international conventions the Uruguayan state has committed to, and whether these commitments actually translates into public policy and is implemented in public services" (Abracinskas 2014 [interview]).

MYSU has founded an observatory for reproductive policies where they investigate these services, for instance the identification of gaps related to the access to contraception, violence, AIDS, and issues related to sexual identity and orientation. The information is being published and presented for political decision-makers in order for them to articulate better policies" (Abracinskas 2014 [interview]). MYSU also work with other social organizations in order to make legal abortion part of the agenda of other movements, for instance the union movement which is very strong in Uruguay, the youth movement, human rights movement and so on. Further, they launch public campaigns "so that people know that the field of sexuality and reproduction has got to do with human rights" (Abracinskas 2014 [interview]). Part of this work is to inform citizens about their rights, and how to proceed if these rights are not being fulfilled (Abracinskas 2014 [interview]). With regards to the involvement of the health sector, the situation resembles the one in Argentina:

There exists a group of professionals called *Iniciativas Sanitarias* who have worked with strategies to reduce risks and injuries, and informing women before and after abortions. In reality they've never worked actively for any legal change, but they raise the question of professional ethics. It should be the professionals who monitor health, especially when considering abortion (Abracinskas 2014 [interview]).

In 2009, when the last president election took place in Uruguay, MYSU launched a campaign where they demanded all the candidates to make a statement of whether and what they planned to do with the abortion issue; and declare whether they would veto a legal abortion bill approved by the Congress. "This was a success, because what we achieved was that, for instance, the current President announced publicly before the election that he would not veto any law" (Abracinskas 2014 [interview]). When Mujica got elected, supporters of the legal abortion bill, both legislators and activists, therefore knew there was a fair chance for this

legislature to improve the situation in terms of access to safe abortion. It appears that the promotion of abortion rights, maybe as a consequence, intensified in this period:

It was a strong public pressure, and a huge campaign, the issue of abortion was made public, because abortion is discussed in all sectors in this country, not only by feminists or in the parliament, abortion is discussed very publicly, and today, it is a question which any journalist would ask any candidate about (Abracinskas 2014 [interview]).

An Argentine activist says although legal abortion is the number one demand of all the women's movements, they still cannot achieve to solve the issue (Anonymous activist 2014 [interview]). What explains the political stagnation of the abortion issue in Argentina? According to a former legislator, a combination of factors prevented progress in 2011: “

The law didn't have sufficient political support, the President was opposing it, it was not installed sufficiently in the public agenda in order to generate popular mobilisation, and it was confronted by the active opposition by the Catholic Church, religious groups, and mobilization by students from Catholic schools” (Rodríguez 2014 [interview]).

Hence, it might be necessary to consider these factors in order to arrive at a minimal sufficient explanation for the failure of policy outcome in Argentina.

6.4 Final Remarks on the Process-Oriented Aspects

In Chapter 5 I outlined the various sites where substantive representation of women has occurred in Argentina and Uruguay. The findings suggest that abortion rights have been represented and discussed in several instances in both cases. However, while the civil society, represented by the women's movement has been a central actor in Argentina, the legislature has been more committed to discuss legal abortion in Uruguay after the entrance of the left-wing coalition *Frente Amplio* in 2005. Furthermore, the Executive attitude in Uruguay shifted when Mujica was elected which encouraged legislators and social activists to mobilize extensively. This is an essential contrast to the current situation in Argentina. In Chapter 6 I have analyzed why legal abortion is attempted, who are actors, and how legal abortion is promoted. In both cases are arguments extensively framed, and various activities performed; information work, lobbying, monitoring public policies and the introduction of bills. It is important to note that in Uruguay, social movements have been of importance, but legislative initiatives were made by representatives (*Frente Amplio*) in the Congress.

The main finding of the comparison of process-oriented aspect in Argentina and Uruguay is that although the analytical framework by Celis et al. (2008) works well for comparing and

highlight important nuances between the two cases, it does not explain why substantive representation as *outcome* occurred in Uruguay and not in Argentina. Furthermore, while the analysis of the process-oriented aspect produces results that are of a generalizable character, it is probable that explaining outcome requires a consideration for external factors that relate to the specific context. Hence, the model by Celis et al. (2008) misses out on the consideration for important factors that increases or limits the opportunity structures that actors work within. As we shall see in the following chapter, my comparative study demonstrates that it is crucial to consider a broader array of institutional and cultural factors when explaining policy outcomes.

Chapter 7

7 Policy Outcome: Participation Counts, but External Factors Decide?

“We learned a while ago that to fight for all or nothing is the best way to not change anything”.

-President of Uruguay José Mujica

7.1 External Factors

In the Southern Cone, female presidents are now serving their second term in office; Argentina (Cristina Kirchner, Chile (Michelle Bachelet) and Brazil (Dilma Rousseff). In Uruguay, however, no woman has ever held the presidency, and women's representation in the parliament is low (12 %). Yet, Uruguay has been more progressive in the area of abortion rights than its neighbours. The analyses in Chapter 5 and Chapter 6 demonstrated that in spite of *high* women's representation, and the presence of various elements of the process-oriented aspects such as repeatedly bill introduction, legislative activities and mobilization by the women's movement, outcome in legal abortion has not been achievable in Argentina. In Uruguay, however, legal abortion has been achieved in spite of *low* women's representation, but elements of the process-oriented aspect do not sufficiently explain the outcome of legal abortion. My comparative study of abortion legislation in Uruguay and Argentina demonstrate that the four analytical elements in the process-oriented aspect of substantive representation produce generalizable and comparable findings of mechanisms related to the political agenda. However, factors external to the process-oriented aspect may contribute to a more comprehensive explanation of the variation in outcome of legal abortion.

According to Franseschet and Piscopo: “Exploring the disconnect between legislators' actions and policy outcomes require a closer look at context” (2008:400). In the following sections I account for findings and implications related to legislative factors, executive factors, cultural factors, and civil society factors. The findings are valuable as preliminary suggestions for further studies on substantive representation as outcome and underline the importance of the consideration of contextual conditions.

7.1.1 Legislative Factors: Power Positions, Party Ideology and Legislative Commitment

The purpose of increasing women's representation in the parliament with the adoption of quota measures is to empower women in political institutions and the expectation is an increased concern for women's rights in policy-making. However, women's descriptive representation in legislative chambers can also turn out to be key determinants of whether male legislators will marginalize their female colleagues (Heath, Schwindt-Bayer, and Taylor-Robinson 2005:433). This marginalization is called the *backlash effect*: as more women enter the parliament, male representatives will work to prevent the influence of women representatives in politics by "pushing" them into less important committees, and prevent that the bills they introduce reach the floor vote (Htun et al 2013:115). Power positions within the legislature are important. For instance, it is usual that the chair of the legislative committees controls the treatment of bills and whether it should be debated or not. Hence, actors in these positions exert substantial influence on the political agenda setting, which again affects the prospect of the particular bill.

With regards to committee assignments, gender bias does exist in Latin America in general, and also in Argentina and Uruguay (Heath et. al 2005; Morelli 2012). Women tend to be assigned disproportionately to committees on women's issues and social issues, and are likely to be underrepresented in committees that deal with economics and foreign affairs. As the proportion of women in office has increased in Latin American legislatures, their representation on all kinds of committees has not increased correspondingly (Heath et. al 2005). A study by Equipo Latinoamericano de Justicia y Género (ELA) in Argentina supports this claim: "Although the sustained incorporation of women in the chambers has permitted a diversification of the parliamentary agendas, and a gradual access to the presidencies of the committees, it is certain that there still exists "women committees" (Morelli 2012:91). The "women's committees" are defined as committees which work with questions related to care and reproductive work; family, minorities, environment, health, education, and culture. An example is the Family, Women, Childhood and Youth Committee in the National Congress of Argentina, which have - since 1995 - had a minimum of 80 % female members (Morelli 2012:91). These data indicate that 23 years after the adoption and implementation of legislative gender quota in the Argentine Congress, gendering institutional structures is still a challenge. The situation is largely the same in Uruguay where only 3 out of 13 ministers are women, all of them located in so-called "soft" ministries; related to health, education and tourism (Johnson 2013b).

Despite the fact that women occupy one third of the seats in the Argentine Congress, until 2010, no women has held the presidency of the Chamber of Deputies or the Senate (Morelli 2012:90). Nine women have occupied the vice-presidency in the lower house after the adoption of the gender quota in 1991, and three female senators have held the vice-presidency in the Senate since 2001. The importance of such positions within the legislature is not merely symbolic. The presidents of the chambers are in control of numerous institutional resources. They decide which committees will treat the various bills and whether bills pass to the floor vote (Morelli 2012:90). Another important legislative position is held by the leaders of the party blocks. Party leaders establish the legislative priorities of their parties, regulate the flow of legislation that is to be voted, decide the composition of the committees and assign the speakers of the debate in the legislature. The party leaders and the presidents of the lower and upper houses establish the agenda of the sessions, which in turn impact the legislative treatment of the introduced bills. In 2012, women constituted 25 % of the party leaders ³⁹ in Argentina (Morelli 2012:90). By contrast, in Uruguay, where women hold a much smaller share of the seats in the Congress, Monica Xavier became the president of the House of Representatives (2012-2013) after the *Frente Amplio* was re-elected in 2009. This presidency is elected for one year. In the Senate, the presidency is held by the Vice President of Uruguay through the entire elected period. In 2012, a female candidate did for the first time compete in the primaries for the presidential candidate (*Frente Amplio*), but was defeated by former president Tabaré Vázquez (*Frente Amplio*). The above examples illustrate that it is difficult for women representatives to advance to power positions within the legislature. Further, they underline the importance of not only looking at numbers of women, but at which positions they hold and to what extent they have the political power to promote their issues of interest.

I would argue that the political will to prioritize abortion rights is a critical condition for any progress to occur when considering the process-oriented aspect, but especially in terms of the outcome-related aspect of substantive representation. Legislators in Uruguay appear to have been more willing to discuss abortion rights at a political level, however, this seems directly related to the electoral success of *Frente Amplio* in the two recent congressional elections. Nevertheless, also political representatives from *Frente Amplio* have demonstrated reluctance to prioritize the issue, and even directly prevented it, as the veto by Vázquez demonstrated. Htun and Power finds that in the Brazilian Congress “left parties have consistent and programmatic positions on controversial gender issues” (2006). A similar tendency seems to

³⁹ Many of these women represented only themselves or minority parties.

have been present in Uruguay in the case of *Frente Amplio*; the presence of a broad political movement with a socialist ideology which prioritizes women's rights in the Congress, explains better the increased focus on and outcome of legal abortion than the process-oriented analytical approach is able to.

In contrast to Uruguay, the Argentine party system is more fragmented and less ideologically oriented (Lopreite 2014:400). Lopreite claims that given the instability of partisan politics, policy outcomes are less predictable in Argentina, a situation which increases the importance of the executive role (2014:401). While legislators from *Frente Amplio* introduced the legal abortion bill, there are few signs of similar commitment by the major political parties in Argentina. Respondents point to two challenges related to legislative factors for the legalization of abortion to occur in Argentina. First, the commitment in the Congress is weak: "I think it's because there is still not a majority in favour of legal abortion in the Congress. If there is not a majority of legislators present to vote, the truth is that it is not convenient to bring it to the floor. Very few political blocks are all in favour of legal abortion (Rachid 2014 [interview]). Indeed, Argentine parties have hesitated to commit publicly with respect to controversial issues such as abortion (Lopreite 2014:400). Second, economic resources and interests influence the legislators' priorities. According to Maffia, "The political will manifest in two ways, as an economic will in terms of budgets, and as a pure political will in the sense that they let this right [abortion] be exercised. If we have a law without guaranteeing the resources, the law will not be complied with" (Maffia 2014 [interview]). However, the economic factor also related to the *clandestine abortion market*.

A very serious problem with abortion is not related to moralism, but to the economy. The amount of money that is left in private hands because of the illegal abortion is not something the doctors want to give up, it is a lot of money. It is a very good reason, though shameful, which explains why doctors often are not willing to support the legalization and decriminalization of abortion (Maffia 2014 [interview]).

This information demonstrates the complexity of the abortion issue and how women's rights are subjected to a number of intervening factors which are not depending on women's descriptive representation, nor the process of substantive representation, but in some circumstances relates to economic interests. To sum up, I conclude that the main finding in terms of legislative factors is that the level of *legislative commitment* by the incumbent party has been significantly higher in the Uruguayan case compared to the Argentine case. Further, this commitment relates to the party ideology of *Frente Amplio*.

7.1.2 Executive Factors: Influence on Legislative Decision-Making

When *Frente Amplio* won a parliamentary majority for the second time in 2009, José Mujica (*Frente Amplio*) was elected President. Mujica is known for pursuing a dialogue-friendly rhetoric. Whether President Mujica is personally against or in favour of the legal abortion bill is uncertain, however. He was not involved in the introduction of the bill, and none of the respondents gave any indications that he had expressed any particular concern during the debate: “About this issue, the President’s opinion was inconsequential, it is inconsequential in a lot of cases, but in this particular issue there was no influence. The only speculations was whether he would veto or not, but he had already announced that he would not veto any law” (Fitzgerald 2014 [interview]). President Mujica’s respect for parliamentary decisions represented one less barrier to the legalization of abortion and his decision to leave policy-making for the legislature represented a positive signal for the promoters of legal abortion: “It was important that this president declared from day one that he would not veto any law. He differentiated himself from President Vásquez while at the same time giving up a professional power (Michellini 2014 [interview]).

The presidential system in Argentina is strong and people do not generally opt for candidates who are dialogue-oriented, given that dialogue is considered a sign of weakness rather than strength (Maffía 2014 [interview]). More often than not, the Argentine way of doing politics is characterized as uncompromising: “[In Argentina] the norms of politics do not include an emphasis on consensus-seeking or conflict avoidance” (Franseschet 2010). This characteristic of Argentine politics may have various implications. According to Franseschet (2010:72), when the achievement of consensus is less important, legislators act more freely in response to issues that they and their constituents consider important. Hence, individual initiatives on controversial issues are more likely to occur. However, if this means that the accepted level of conflict in policy-making is high, it may not be a favorable condition after all. It takes more than the freedom to introduce controversial issues in order to make policies. When political actors become motivated by individualistic and personal gains in politics, their behavior contributes to an enforcement of a competitive environment where the controversy and the victory in an issue become more important than the actual problem they are set to solve through policy-making. Comparing the two cases, I would argue that the consensus seeking way of policymaking has been favorable for achieving the outcome of legal abortion in Uruguay.

President Kirchner has expressed her opposition to abortion and her actions have underlined this position. For instance, former health minister Juan Manzur had to leave office after publishing an orientation guide regarding abortion rights (La Nación 2011b). Several respondents expressed that President Kirchner's opinion has influenced the abortion debate. A politician from the radical left explains:

What the President did not want to discuss was not discussed; not among her party fellows, nor among the opposition. The opinion of the President has had the strength to block a debate that even experts from her own political force support" (Biasi 2014 [interview])

An ex-legislator supports this claim: We have public opinion and legislators who would vote in favor of our side, the only thing that remains is that Christina Kirchner "removes her foot from the throat" of the legislators. If she allows the debate, I think we can manage" (Maffia 2014 [interview]). President Kirchner has not stated explicitly that she would veto any law that expands abortion rights if it is approved by the Congress. A legislator in the local legislature of Buenos Aires says that it is uncertain how President Kirchner would react if the legislative debate were to advance: "It is an issue for the Congress; once the Congress advances we will see how the President intervenes" (Rachid 2014 [interview]).

These statements indicate that when legislators' scope of action is being constrained by a dominant executive the chances for legislative change diminish: "The outspoken support by the President, instead of her position against, is a central condition (Rodriguez 2014 [interview]).

My findings suggest that the executive has constrained the legislative debate on abortion rights in Argentina. Although this has not been the case in Uruguay, an *executive commitment* in terms of explicit support of legal abortion has been non-existing in both cases.

7.1.3 Cultural Factors: The Influence of the Catholic Church

Religion is thought to be an important aspect of culture (Weldon 2002a). The issue of abortion challenge religious doctrines or cultural norms which represent great obstacles when confronting the need for legislative changes (Lopreite 2014:391). Uruguay is a "país laico", which in Spanish refers to a country where church and state is formally separated. The Uruguayan constitution separated the church and the state already in 1917, and today around 47 % of the population consider themselves Catholics (CIA World Factbook 2014a). According to legislator Posada, Uruguay has historically looked towards France, and adopted the philosophy of a neutral state in terms of religion, in contrast to Argentina where acting

“politically correct according to the Church” has been the norm (Posada 2014 [interview]). In Uruguay, The Holy Week is referred to as the *Tourist Week*, and attempts have been made to rename Christmas Day as *Family Day*. Michelini also emphasizes the church-state relation in Uruguay in comparison to Argentina: “Our two countries may be very similar, but it is certain that an important difference in the society and in the government is that Uruguay resolved the separation between the Church and the state in a better way than Argentina” (Michelini 2014 [interview]). The Argentine Constitution states that “The Federal Government supports the Roman Catholic Apostolic religion” hence Catholicism is not an official state religion nor is there a clear separation of church and state (The Argentina Independent 2013).

The agreements between the government and the Church in Uruguay in 2002 to prevent legal abortion, as well as the veto by former President Vasquez, are incidents which demonstrate that the promotion of abortion rights has not been without challenges: “There is an important influence by the Church in politics here in Uruguay” (Michelini 2014 [interview]). In fact, after the legal abortion law was approved in 2012, legislators from the conservative parties, including former president Vasquez, and fractions of the civil society initiated a campaign to collect signatures in order to prevent the law (Posada 2014 [interview]). This was attempted through the mechanism of referendum provided by the Uruguayan political system. This procedure requires that 25 % of the electorate first vote in favour of a referendum to be held about the disputed law. However, only around 10 % of the electorate voted, and the referendum was thus never realized (La Nación 2013b). In this respect, a Uruguayan legislator commented the following: “Why is it that the leaders of this country vote against abortion and mobilize against it, when the Uruguayan people do not respond in the same manner?” (Fitzgerald 2014 [interview]).

In Argentina, 92 % of the population consider themselves Catholic though only 20 % are practising (CIA World Factbook 2014b). However, many people who declare themselves Catholics are in favour of decriminalizing abortion (Maffía 2014 [interview]). The organization *Catholics for Choice* is an example of a Catholic pro-choice movement which also exists in Argentina. Nevertheless, when the former Argentinean Archbishop Jorge Mario Bergoglio was appointed the new Pope in 2013, it affected the Argentine society in terms of a sudden increase in religiously devoted people:

(...) in day to day life, people do not attend church a lot. The Catholicism is like something more cultural, however, when the Pope was elected it was a furore, there where banners with pictures of him in the whole city, and there was a record in the sale of Easter pies in the bakeries. Let's say that the

election of an Argentine pope reactivated the question of religion, there was a “papa-mania” which in my opinion had to do with the fact that the Pope is Argentine. There was a lot of people in favour of legal abortion celebrating the new pope, it was something very strange” (Anonymous activist 2014 [interview]).

The Pope was criticized after he declared in an interview that the Church “must shake off the obsession with teachings on abortion, contraception and homosexuality” (Reuters 2014). Later on, the Pope stated that the Church is still against abortion, using the wording “horrific” about the practice of abortion (Reuters 2014). That the Pope is Argentine means he exerts considerable influence in Argentina; an inconvenient situation for the legal abortion movement: “The last bastion is abortion. It was not permitted by Bergoglio in his period, and he is not at all going to permit it now that he is the Pope” (Maffía 2014 [interview]).

The Argentinean government’s relation with the Church is of importance in this respect. For instance was the divorce reform of 1985 supported by then President Alfonsín, who had a confrontational relation with the Church (Htun 2003). The Catholic Church was often mentioned when respondents spoke about challenges in regards of legal abortion in Argentina:

The bill is not treated because all the political forces have a very strong commitment to the Catholic Church, and this is a country where the Catholic Church has a lot of political power; a very strong economic power and a strong impact in capitalist investments in the country. Thus, all the political parties has a great commitment to the Church, and no one has any interest in the legal abortion bill being treated (Biasi 2014 [interview]).

The reasoning behind the Church’s fierce opposition to abortion is argued to be grounded in the defence of the right to life, and the right of the unborn. Indeed, former conservative President Menem in Argentina decided to officially celebrate the “Day of the Unborn”. However, critics are sceptical to the intentions to the Church:

The reasons are political and not because of the conception of life, because we are talking about an institution which, throughout history, has cared pretty little about life. It is a battle which is sometimes difficult to explain. The illegality of abortion is a tool for social discipline (Biasi 2014[interview]).

The question is how the Church exerts their power in politics and what consequences Argentine politicians face if they defy the Church and legalizes abortion. According to Maffía, the Argentine state finances the charity that the Church spends in return for their silence about poverty and corruption.

However, if the government make an unpopular decision, this could result in the Church violating this agreement:

The political cost could unfold like it was unfolded many times before: the Church openly announces the unemployment, the poverty, and the corruption that exist in Argentina. This would generate an impact on the national and international public opinion which the politicians fear (Maffia 2014 [interview]).

On the grounds of the implications of the above findings, I suggest that the *level of political influence by the Catholic Church* in the abortion issue is of deeper impact in Argentina than in Uruguay.

7.1.4 Civil Society: Social Movements and Counter movements

Social movements can influence policies, and sometimes do nonstate actors play the key role in bringing about policy reform (Díez 2013:213-214; Weldon 2002). *Countermovements* represent an opposition force to social movements which influences the opportunity structures (Díez 2013). One of the most salient countermovement to so-called moral policies in Argentina is the Catholic Church (Díez 2013:228). In the case of the approval of same-sex unions in Buenos Aires, a weakened countermovement due to a scandal in the Church contributed as an element in opening the political opportunity for the Lesbian, Gay, Bisexual and Transgender-movement (Díez 2013:228). Similar circumstances influenced the outcome of the same-sex marriage law approved by the Argentine Congress and supported by President Kirchner in 2010: “The debate about same-sex marriage was supported by the ruling party, after a fight with the Church, which at the time was represented by Bergoglio (the current Pope) (Anonymous activist 2014 [interview]).

An important difference between the same-sex marriage campaign and the legal abortion campaign in Argentina might be the variation in the strength of the *countermovements*. Considering other gender issues, like the Argentine campaign for divorce reform in 1985, this was supported by a broader movement which generated more support across political parties than the abortion movement have been able to do. The abortion issue generates a unique degree of political polarization and moral outrage (Htun 2003:153). An example of how the antiabortion movement mobilizes is the incident in 2011 related to the sanction of the legal abortion bill in the city legislature of Buenos Aires and the governor’s subsequent veto. When the governor announced publicly that a woman, a victim of human trafficking, would have a legal abortion the following week, the antiabortion movement Pro Vida appealed to a lower court in order to stop the abortion. The claim by Pro Vida was upheld by the judge who stated that “They [the mother and the child] are victims of an unjust aggression”, but “it is not

possible to repair damage with another irreversible damage” (Infobae 2012). The abortion was stopped and never carried out. Argentinean governments has to a large extent during the years either remained silent or openly opposed the decriminalization of abortion, an attitude which have at best supported the antiabortion movement and limited the political space for the feminist reproductive rights movement (Htun 2003:163). Argentine activists expressed concern for the “demobilization” of the legal abortion movement due to governmental discourse: “It’s been a decade of demobilization. This happened because many believed in the political discourse of the government (Biasi 2104 [interview]). According to Blofield, the conflict between the Church and the feminists has to be understood within the socio-economic and political context:

In more equal societies it is easier for feminists to mobilize social support for reform, and left-wing parties are more responsive to their demands. In highly unequal societies, it is very hard for feminist to mobilize a support base, particularly on controversial issues, and Left parties are unresponsive to weak feminist mobilization even in the face of a public health crisis. The economic elites and their political representatives find it easier to block reform given that they have more power over framing and agenda-setting (2006:157).

Legislators fear to lose political support from their electoral province, especially if they belong to the more conservative provinces of Argentina. This is a factor strong enough to prevent them from acting in favour of abortion rights (Gherardi 2014 [interview]). Argentine respondents claimed that legal abortion needs to be installed as an issue which generates political gains instead of the loss of votes, while at the same time neutralizing the opposition from the Catholic Church and its influence in political parties and provincial governors. The mobilization by the antiabortion movement is emphasized:

At the one hand we have the activism by fundamentalist groups and on the other hand, the huge hypocrisy that exists in this society which makes people not want to talk about the issue, even when they are personally involved they don’t want to talk about it. This makes it difficult to advance” (Rachid 2014 [interview]).

Even though attempts were made in Uruguay to prevent legal abortion in 2012 through the mechanism of referendum, the efforts did not provoke large scale mobilizations. Hence, when comparing the particular event of the legalization of abortion in Uruguay in 2012, with the attempts in Argentina in 2011, it seems that the *impact of countermovements* is weaker in the Uruguayan case than in the Argentine case.

7.2 The Impact of External Factors on Policy Outcome

In **Table 7.1** I have summarized four external factors related to the specific context which seem to have been influential for the variation in outcome of legal abortion in Argentina and Uruguay⁴⁰. Favourable conditions are marked by shading.

Table 7.1: External Factors: The Uruguayan Case and the Argentine Case

External Factors	Argentina	Uruguay
Legislative commitment	Low	High
Executive commitment	-	-
Level of influence by the Catholic Church	High	Low
Strength of countermovement	High	Low

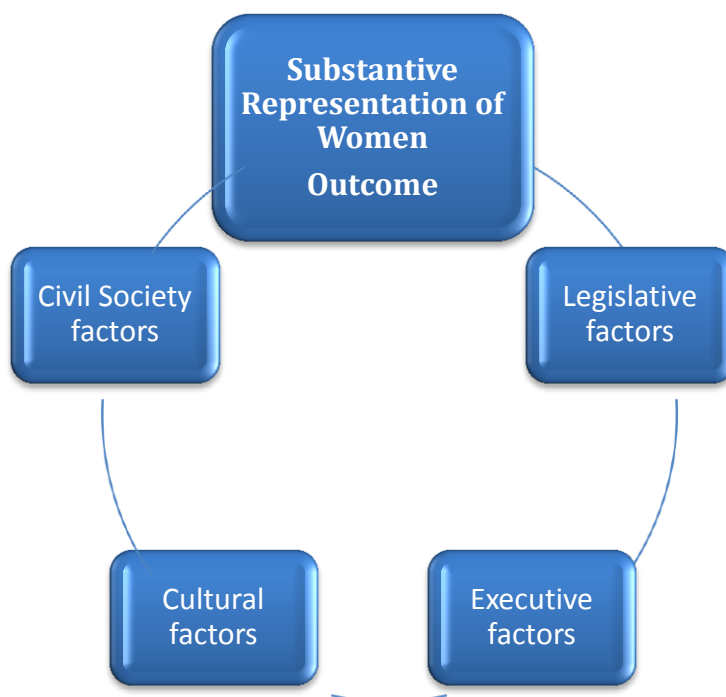
My understanding is that in the Argentine case, the following conditions have hindered policy outcome of legal abortion; a complete absence of executive commitment, low levels of legislative commitment, a strong countermovement and a high level of political influence by the Catholic Church. I find the main variation between the Uruguayan and the Argentine case to be related to *Legislative commitment*. The policy proposals and the will to prioritize legal abortion by the *Frente Amplio* is a key factor for explaining the variation in policy outcome in Uruguay. Further, although the executive did not play an active part during the process, the a-priori decision by President Mujica not to use the executive veto power was important because it removed a potential barrier to legal abortion. The low levels of counter mobilization and influence by the Catholic Church seem to have been favourable, although not necessarily decisive conditions for change to occur in Uruguay.

My hypothesis is that abortion was legalized in Uruguay in 2012 due to 1) long-term legislative commitments by *Frente Amplio*, 2) the absence of a presidential veto, 3) low levels of counter mobilization, 4) low influence of the Catholic Church in Uruguayan policy-

⁴⁰ These criteria are based on a subjective assessment of empirical findings in this analysis. The development of objective measurement criteria of necessary and sufficient conditions is a task for future research.

making. On these grounds I suggest an analytical model presented in Figure 7.1 which includes the following four elements of explaining-outcome factors: Legislative factors, Cultural factors, Executive factors and Civil Society factors. I will now give a few examples that relate to each category.

Figure 7.1: Explaining Policy Outcome of Legal Abortion



In terms of *legislative factors*, this category may include various factors that impact policy outcome. To which extent there is a legislative commitment is important for policy outcome, after all, the legislature is a decision-making body. My comparative study demonstrates that it is useful to consider the composition of the legislature in terms of party membership, commitment by the majority party and ideology in the given context when studying policy outcomes in substantive representation of women. With regards to *cultural factors* my study suggests that the impact of religion and religious institutions is relevant to consider, particularly in issues such as abortion which is central to Catholic doctrine. To which degree these institutions are able to influence policy outcome might be further explored, also in other contexts. However, cultural attitudes towards women, for example “macho” attitudes could also be considered because such attitudes may have implications in terms of a general resistance to policies that address gender issues. When considering *Executive factors*, several factors offer indications of explanations. For instance, executive commitment in terms of

policy proposals, the executive's explicit or implicit support of legislative debate, and the use of veto can be further explored. *Civil Society factors* may include public opinion, but more importantly is the study of the strength of social movements and counter movements.

By developing criteria for an objective measurement of necessary and sufficient conditions within each of the proposed categories, future research will be able to account for an even broader array of explanations of the complexity of substantive representation of women as outcome.

Chapter 8

8 Conclusions: Participation Counts, but External Factors Decide?

8.1 Four Propositions on Substantive Representation of Women

The research question which I have attempted to answer with this study is “*How do the different elements of the process-oriented aspect of representation explain the variation of outcomes in legal abortion in Argentina and Uruguay? What other external factors can be identified?*”

The puzzle of this study – that the Uruguayan Congress with low women’s representation has legalized abortion, while the Argentine Congress with high women’s representation has not - has provided for the investigation and comparison of various factors with regards to the process-oriented and the outcome-oriented aspects of substantive representation of women. While the analytical model I applied in my inquiry of the process-oriented aspect works well for comparing the two cases and brings out important variation and nuances, it does not suffice to explain why substantive representation as outcome has occurred in Uruguay and not in Argentina. I have argued that contextual factors should be considered to explain substantive representation as outcome. On these grounds, I suggested an extended analytical model in Chapter 7. In order to sum up the implications of the empirical findings I have chosen to generate four propositions related to each element of the process-oriented aspect and the outcome-oriented aspect.

1) Civil society and women’s movements are sites where substantive representation of legal abortion occurs. However, external factors like religious institutions and counter movements are countervailing factors that impact this element of the process-oriented aspect. The analysis in Chapter 5 demonstrated that substantive representation as process has occurred at various sites, with a somewhat broader scope in the Argentine case than in the Uruguayan case. The within-case comparison between various sites equips the researcher with a better understanding of where substantive representation as process occurs. In the Argentine case, legal abortion rights have been promoted to a larger degree by the women’s movement than by the Congress. This is an important finding, because it shows that by limiting the comparison to national parliaments as suggested by the conventional approach, we miss out on significant aspects of what is going on in the particular society. Hence, we would have

come to ignore that although, and maybe *because* the Argentine Congress have not successfully installed the discussion of legal abortion, the civil society has taken the role of representing women in this issue. Further, the role of the Catholic Church in the Latin-American context is difficult to ignore when studying a controversial issue like abortion. This is an external and *countervailing* factor in the element of *where* substantive representation of women occurs. In the Argentine and Uruguayan cases the political influence of the Church varies and countermovement actors varies, with seemingly greater impact in Argentina. The anti-abortion campaigners in Uruguay could not prevent the legislative process or outcome. The results of the analyses indicate the relevance of considering context-specific factors, for example the influence and the strength of the counter movements because external factors may impede policy outcomes.

2) *The attempts to legalize abortion are based on a concern for human rights, social justice, and international commitment. The framing of arguments is an important part of the legislative process, but it is not an effective measure of variation in policy outcome.* The discourse and the framing of the arguments in favor of legal abortion are based on similar considerations in both cases. The overall concern is the respect for human rights in terms of preventing that women are injured or die as a consequence of clandestine surgeries, the implications of a policy where wealthy women can buy a safe abortion while poor women risk their health and life, and finally the emphasis on the obligations which the governments have committed to through international conventions. However, while claims-making represents an important part of the legislative process, I doubt the effectiveness of this particular element in explaining policy outcomes. The problem with legal abortion is the strong polarization between defenders and opponents. The moral, ethical or religious perception of what is right and wrong is fundamental, which implies that the chances that opponents will change their mind due to convincing argumentation are fairly small. Furthermore, the impact of arguments is difficult to measure and would require a far more careful evaluation of the arguments' ability to change the opinions of lawmakers.

3) *Female representatives are more active than male representatives in the process-oriented aspect of substantive representation of women. However, the general level of legislative commitment is critical for the outcome of legal abortion.* The results suggest that in general, women in parliaments and in civil society are more involved in the process of promoting abortion rights. However, my analyses show that the support from male representatives is in any case critical. I would argue that it is a favourable condition for the outcome of legislation

when the incumbent party introduces the bill because *commitment and political will* is necessary, but even perhaps sufficient to achieve policy outcome. In the Uruguayan case, party ideology triumphs gender.

Critical actors and acts may be decisive factors in terms of advancing the legislative debate. However, the impact of “who acts” depends on the power actors hold within the legislature. The decision by *Frente Amplio* to appoint a committee where they had a majority to approve the bill was important to guarantee a floor vote. This manoeuvre required that they had the power to do so being the incumbent party. However, *Frente Amplio* did not have the majority to pass the bill in the Congress. The critical act in this case was thus the intervention by Posada. In this situation, Posada acted by the virtue as a regular deputy, but because his support was necessary for sanctioning the bill, he could exert substantial influence on the formulations of the law. Notwithstanding Vega’s personal motivations for discussing the bill, the historical debate would not have occurred if Vega had wanted to prevent it. Vega had positional power as a gate-keeper given that he was chair of the Criminal Law Committee and thus decided whether the legal abortion bill should be discussed or not. The consideration for critical acts in the process-oriented aspect is important and indicative of policy outcome. Further, external factors like power positions within the legislature, party ideology and legislative commitment contribute to the explanation of substantive representation of outcome.

4) *Women’s movements are active promoters of legal abortion, but the legislature and the executive are the decision-makers.* How substantive representation of women is expressed has been useful for identifying the various activities promoted in favour of legal abortion. Overall, social movements play an important role in promoting legal abortion, especially in Argentina, where the women’s movement have put legal abortion on the political agenda. Activities like information work, lobbying, and public debates create awareness and is a critical condition for substantive representation as process to occur, thus increasing the chances of policy outcome. Without any legislative process, the outcome cannot occur. However, for policy outcome to occur, certain conditions have to be present within the decision-making bodies. The two cases show that the influence of the Executive and the legislative commitment is important to consider. In Uruguay, the commitment of *Frente Amplio* was crucial for the legislative debate and policy outcome. Further, even though President Mujica did not actively support legal abortion, he eliminated a potential obstacle to policy outcome by not using the veto power. In Argentina, President Kirchner has not had the opportunity to demonstrate her will to use the

veto in a similar situation. However, Kirchner's strategy has been to constrain the legislative debate, thus maintaining the debate at an insignificant level. Without the will by gate-keepers to discuss the topic, a majority in the parliament to sanction the bill, and an executive that respect parliamentary decisions, substantive representation as outcome will not occur.

8.2 Theoretical Implications and Suggestions for Future Research

The findings of this thesis underline the importance of distinguishing between the concepts of substantive representation as *process* and *outcome*. In accordance with the findings of Devlin and Elgie (2008) and Franseschet and Piscopo (2008), I find that process-oriented aspects of substantive representation of women may occur without leading to outcome. The process-oriented aspect may serve as a measure of substantive representation of women by its own means: achieving changes in the political agenda is evidence of substantive representation of women. However, given that policy outcome is the ultimate target in substantive representation; we need to understand the mechanisms that affect both its success and failure. Is it thus meaningful to account for both process-oriented aspects and outcome-oriented aspects in studies of substantive representation of women? I would argue that a consideration for both aspects provides for a more thorough inquiry with the result of stronger inferences of the complex relationships that are embedded within the concept of substantive representation. Furthermore, the boundaries between the process-oriented and outcome-oriented aspects are fluid, thus a careful consideration of both aspects is appropriate. However, given the limitations of time and space, this thesis can only offer preliminary indications of how substantive representation of women occurs in the real world. Future research may advantageously include more cases, study other regional contexts, investigate the implications of counter movements, and not least, add other policy areas in order to account for a broader understanding of women's substantive representation.

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Appendix I

List of Interview Respondents

Abracinskas, Lilián: [Uruguay] Director of *Mujeres Y Salud en Uruguay* (MYSU)
Activist, Anonymous: [Argentina]
Amarilla, Gerardo: [Uruguay] *Partido Nacional*, House of Representatives
Biasi, Vanina: [Argentina] Representative of *Partido Obrero* and *Plenario de Trabajadoras*
Filis, Alejandra: [Uruguay] *Secretaria de Género, Equidad, y diversidad de la Central de Trabajadores (PIT-CNT)*
Fitzgerald, Cantero: [Uruguay] *Partido Colorado*, House of Representatives
Gherardi, Natalia: [Argentina] Executive Director of *Equipo Latinoamericano de Justicia y Género (ELA)*
Michellini, Felipe: [Uruguay] *Frente Amplio*, House of Representatives
Lauraga, María Elena: [Uruguay] *Frente Amplio*, House of Representatives
Posada, Iván: [Uruguay]: *Partido Independiente*, House of Representatives
Rachid, Maria: [Argentina] *Frente para la Victoria (FPV)*, Autonomous City Legislature of Buenos Aires
Rodriguez, Marcela: [Argentina]
Sanseverino, Berta: [Uruguay] *Frente Amplio*, House of Representatives
Schvartzman, Elsa: [Argentina] Activist, *La Campaña por el Derecho al Aborto Legal, Seguro y Gratuito*

Appendix II

General Interview Guide

1. **Presentation of me and the project. All necessary information regarding data, right to withdrawal etc.**
2. Could you please tell me briefly about your organization/party and how you have been working for promoting abortion rights in Uruguay/Argentina?
3. Has legal abortion been an important topic for the **political party** you represent?
4. **Abortion and women's representation in Latin America**
 - 4.1 In your opinion, what do you think is the most important reason why abortion is illegal in most parts of Latin America?
 - 4.2 More women are entering the national legislatures in Latin America. Do more women in decision-making bodies make a difference in terms of women's rights?
5. **Who acts in substantive representation of women?**
 - 5.1 Who are the actors that work for abortion rights in Argentina/Uruguay? (Are there any legislators or organization that you know have been particularly active on this issue?)
 - 5.2 Who initiated the legislative process in Uruguay/Argentina?
 - 5.3 How important is the opinion of the Executive in this matter?
 - 5.4 Do you remember any important incident that occurred during the legislative process?

6. Where does substantive representation of women occur?

- 6.1 Where are abortion rights being promoted? (In the legislature, by social movements, women's organizations etc?)
- 6.2 Do you know of any organizations that work for legal abortion which have direct links to the legislative process through politicians?
- 6.3 If you do, how do legislators cooperate with organizations for decriminalizing abortion in Argentina/Uruguay?
- 6.4 How important do you believe a strong women's movement is for legislation on women's issues to occur?

7. Why is substantive representation of women attempted?

- 7.1 How have the arguments for decriminalizing abortion been framed in Argentina/Uruguay? (Human rights, women's rights, health rights?)
- 7.2 Why is legal abortion an important issue?

8. How is substantive representation of women expressed?

- 8.1 What activities does your organization/party do in order to promote legal abortion?
- 8.2 Have your organization been involved in the legislative process? How is this procedure like?

9. Are there any perspectives you would like to add, which I did not mention in my questions?

Specific questions added to the general interview guide depending on the respondent

- 1. Has reproductive rights and safe abortion been an important topic for the political party you represent?
- 2. Was the legislative process in Uruguay in 2012 successful?
- 3. What practical difference is there between the abortion being decriminalized and the abortion being legalized?
- 4. Could you tell me about the work in Committee that treated the bill in 2012?
- 5. How were the circumstances different in Uruguay in 2012 compared to earlier attempts? Why did the bill succeed this time?
- 6. Could you tell me about the engagement for abortion in Uruguayan politics in the recent years?
- 7. Did/do your party collaborate with organizations who work for abortion rights?
- 8. Why is substantive representation of women attempted?
- 9. How was the topic framed? (Human rights, health, women's rights)
- 10. Do female legislators influence the politics on women's rights – and abortion rights? Or do male MPs also engage in the pro-choice debates?
- 11. Are there any perspectives you would like to add, which I did not mention in my questions?

Appendix III

Document Sources: Legislative Debate in Uruguay 2012⁴¹

House of Representatives, XLVIIa. Legislature: Special Committee in order to treat the projects related to voluntary interruption of pregnancy⁴².

Transcript versions

Nº 1165 of 2012, “Election of President and Vice president”, 30 of July 2012

Nº 1194 of 2012, “Penal Code Provisions are modified”, 9 of August 2012

Nº 1255 of 2012, “Penal Code Provisions are modified. Circumstances, terms and conditions are set”, 21 of August 2012

Nº 1218 of 2012, “Penal Code Provisions are modified. Circumstances, terms and conditions are set” Delegations are received. 22 of August 2012

Nº 1219 of 2012, “Penal Code Provisions are modified. Circumstances, terms and conditions are set” Delegations are received”. 23 of August 2012.

Nº 1246 of 2012, “Penal Code Provisions are modified. Circumstances, terms and conditions are set” Delegations are received”. 4 of September 2012.

Nº 1231 of 2012, “Penal Code Provisions are modified. Circumstances, terms and conditions are set” Delegations are received”. 5 of September 2012.

Nº 1232 of 2012, “Penal Code Provisions are modified. Circumstances, terms and conditions are set” Delegations are received”. 6 of September 2012.

Nº 1247 of 2012, “Vote” 10 of September 2012.

Nº 1248 of 2012, “national Institution of Human Rights and the Ombudsman” 13 of September 2012

⁴¹ I received copies of these documents while visiting the Uruguayan Congress.

⁴² Cámara de Representantes XLVIIa. Legislatura. Comisión Especial con la Finalidad de tratar los proyectos vinculados a la interrupción voluntaria del embarazo.

